

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

STUDENTS FOR FAIR ADMISSIONS,	) Trial Day 6
	)
Plaintiff,	)
	) Civil No.
vs.	) 1:23-cv-2699-RDB
	)
THE UNITED STATES NAVAL	) Baltimore, Maryland
ACADEMY, ET AL.,	)
	) September 23, 2024
Defendants.	) 10:03 a.m.
	)

TRIAL IN THE ABOVE-ENTITLED MATTER CONTINUED  
BEFORE THE HONORABLE RICHARD D. BENNETT

A P P E A R A N C E S

On Behalf of the Plaintiff:

ADAM K. MORTARA, ESQUIRE  
PATRICK STRAWBRIDGE, ESQUIRE  
J. MICHAEL CONNOLLY, ESQUIRE  
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On Behalf of the Defendant:

JOSHUA E. GARDNER, ESQUIRE  
CATHERINE M. YANG, ESQUIRE  
ANDREW E. CARMICHAEL, ESQUIRE  
JOHN ROBINSON, ESQUIRE  
MEDHA GARGEYA, ESQUIRE  
CHRIS E. MENDEZ, ESQUIRE

Also Present:

EDWARD BLUM, STUDENT FOR FAIR ADMISSIONS  
BRUCE LATTA, NAVAL ACADEMY  
TRACEY URBAN, PARALEGAL  
LINDSEY O'CONNOR, PARALEGAL  
MICHEAL PUSTERLA, IT  
BRIAN SIMMONS, IT

Reported by:

Ronda J. Thomas, RMR, CRR

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Direct by Mr. Robinson

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1 (10:03 a.m.)

2 **THE COURT:** Good morning, everyone. You all may be  
3 seated, and I hope everyone had a nice weekend. And, with  
4 that, we are ready to continue. And I believe that we're ready  
5 for the defense to call the next witness, correct?

6 **MS. YANG:** That's right. Thank you, Your Honor.

7 **THE COURT:** Good morning, Ms. Yang. Nice to see you.

8 **MS. YANG:** The defense will call Ashish Vazirani.

9 **THE COURT:** Good morning, sir. If you'll come forward  
10 and be sworn.

11 **THE CLERK:** If you don't mind raising your right hand,  
12 please.

13 (Witness sworn.)

14 **THE CLERK:** Please adjust that microphone, and if you  
15 don't mind speaking directly into it. Please state and spell  
16 your first and last name for the record.

17 **THE WITNESS:** My first name is Ashish, A-S-H-I-S-H;  
18 last name Vazirani, V as in Victor, A-Z-I-R-A-N-I.

19 **THE COURT:** You may proceed, Ms. Yang.

20 **MS. YANG:** Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 - - -

23 **BY MS. YANG:**

24 **Q.** Good morning, sir.

25 Where do you currently work?

1 A. Morning.

2 Currently, I work at the Department of Defense.

3 Q. What is your position?

4 A. I'm currently serving as the -- performing the duties of  
5 Undersecretary of Defense for Personnel and Readiness.

6 Q. What are your responsibilities in that position?

7 A. As the Undersecretary of Defense for Personnel and  
8 Readiness, I serve as the secretary's principal staff assistant  
9 on personnel and readiness matters. That includes force  
10 readiness, force management, health affairs, civilian and  
11 military requirements. We have responsibility for the  
12 commissary system; DoDEA schools; morale, welfare, and  
13 recreation, and quality of life matters.

14 Q. You just mentioned force readiness. Is that another way  
15 of saying military readiness?

16 A. That is another way of saying military readiness.

17 Q. How does the Department of Defense define force readiness  
18 or military readiness?

19 A. Military readiness is the department's ability for our  
20 forces to fight and meet the demands of mission assignments.

21 Q. Is there a time frame for that definition of force  
22 readiness?

23 A. As we think about strategic readiness, the strategic  
24 readiness of the force is our ability to generate capability,  
25 to build, maintain, and generate capability to meet our

1 strategic objectives over and across threats and different time  
2 horizons.

3 Q. What are your office's responsibilities with respect to  
4 the military service academies?

5 A. The Office of the Undersecretary of Personnel and  
6 Readiness is responsible for oversight and coordination with  
7 the military departments for oversight and policy of the  
8 military service academies.

9 Q. Sir, who do you report to?

10 A. I report to the Secretary of Defense.

11 Q. For how long have you covered the portfolio of the  
12 Undersecretary of Personnel and Readiness?

13 A. I've served as the Undersecretary of Defense, Personnel  
14 and Readiness since September 8, 2023. Prior to that I served  
15 as the Deputy Undersecretary of Defense for Personnel and  
16 Readiness from July of '22 until September of 2023.

17 Q. Prior to your time in personnel and readiness, what was  
18 your position and general responsibilities?

19 A. Prior to confirmation as Deputy Undersecretary of  
20 Personnel and Readiness, I served as a senior adviser in the  
21 Department of the Navy reporting to the assistant secretary of  
22 manpower and reserve affairs, specific responsibilities for the  
23 office of force resilience.

24 Q. Outside of the Department of Defense, are there any other  
25 roles you've held with a focus on military communities?

1 A. Well, I started my career as a submariner, as a naval  
2 officer. And then subsequent to that, I spent about 20 years  
3 in management consulting. And then I left management  
4 consulting and worked in the nonprofit sector, specifically  
5 focused on military families and providing support to military  
6 families.

7 I served as the chief programs officer and chief  
8 development officer of the armed services YMCA and then as the  
9 executive director and chief executive officer of the National  
10 Military Family Association.

11 Q. You mentioned your prior service. Why did you decide to  
12 serve in the military?

13 A. My family immigrated to the U.S. when I was about just  
14 over 3 years old. And so from a young age I felt a desire to  
15 serve and thought that I wanted to have an opportunity to give  
16 back to my country.

17 My dad died when I was younger. My mom remarried. She  
18 married a blinded veteran from the Vietnam era, a blinded  
19 Marine. And growing up around a group of former service  
20 members and Vietnam era veterans, that solidified my desire to  
21 continue to serve or to go into service.

22 I was able to obtain an ROTC scholarship, and that allowed  
23 me to finance my college education.

24 Q. Did you ever deploy?

25 A. I did deploy. I deployed twice. I served as a submarine

1 officer, and I served on the USS Groton from 1988 to 1991. I  
2 did a deployment to the Mediterranean in the summer of 1989 and  
3 then a deployment to North Atlantic in the winter of 1990 to  
4 1991.

5 **Q.** Let's look at Defense Exhibit 45.

6 This is a document already in evidence.

7 And this will be the 2022 national defense strategy.

8 Sir, are you familiar with the national defense strategy?

9 **A.** I am familiar with it.

10 **Q.** Generally speaking, what is the national defense strategy?

11 **A.** National defense strategy is the department's strategy for  
12 articulating the actions and -- the priorities and actions the  
13 department will take over the next decade to meet the  
14 objectives of the national security strategy. It outlines a  
15 number of priorities, four specific priorities, and then three  
16 strategies to effect those priorities.

17 **Q.** Who issues the national defense strategy?

18 **A.** The Secretary of Defense issues the national defense  
19 strategy.

20 **Q.** Who provides input to the Secretary of Defense on the  
21 national defense strategy?

22 **A.** The secretary's principal staff assistants, the  
23 undersecretaries of defense, provide input as well as the  
24 military departments and the Chairman of the Joint Chiefs of  
25 Staff.

1 As the department -- when the secretary issues policy or  
2 guidance, he will take input from his staff assistants and  
3 coordination across the leaders in the Department of Defense.

4 Q. Let's look at page 6 of DX45, second-to-last paragraph.  
5 Can you read into the record the sentence beginning "To meet  
6 this moment."

7 A. "To meet this moment, we will tap into our core strengths:  
8 our dynamic, diverse and innovative society; our unmatched  
9 network of allies and partners; and the tremendous men and  
10 women of our armed forces."

11 Q. Can you explain for the Court what that has to do with the  
12 military's national defense strategy?

13 A. In order to meet our requirements and to address the  
14 challenges that we face across the world, we require a force  
15 that draws from the strength of the U.S., and part of that is  
16 our diversity and our innovation.

17 As the requirements and challenges across the world change  
18 on a frequent basis, that requires a degree of innovation, and  
19 it requires an ability to assess and mitigate risks. And so as  
20 we tap into those strengths of the U.S. and work with our  
21 allies and partners in order to meet those challenges, we need  
22 to -- we need to ensure that we have the force that is capable  
23 of doing that.

24 And as the secretary has often said, the strength of our  
25 force are our men and women who serve.



1 Q. When the Department of Defense thinks about diversity,  
2 does that include racial and ethnic diversity?

3 A. As we think about diversity, we think about it broadly  
4 around all those characteristics that create each unique  
5 individual, and so race and ethnicity are included in that.

6 Q. Is the judgment expressed here in Defense Exhibit 45 still  
7 the department's judgment today?

8 A. Yes, it is.

9 Q. Let's look at page 10, first paragraph. This  
10 paragraph talks about building enduring advantages and lists a  
11 number of ways the Department of Defense will do so.

12 Do you see that?

13 A. I do.

14 Q. First, what does it mean to build enduring advantages?

15 A. Well, to build enduring advantages ties back to our idea  
16 of strategic readiness and the ability to address threats and  
17 build our strategy across time horizons. And so as we build an  
18 enduring advantage, we need to ensure that we balance the needs  
19 of today with the needs looking out into the future.

20 Q. What is the department expressing in the last sentence  
21 when it says, "We will cultivate our talents"?

22 A. This last sentence focuses on the fact that, in order to  
23 build an enduring advantage, we need to build a force that has  
24 a wide range of skills, abilities, and an ability to understand  
25 and mitigate risks across time horizons.

1 Q. How does that relate to building an enduring advantage?

2 A. As we build an enduring advantage, we require a force that  
3 can address issues in the current time period as well as time  
4 horizons as we look ahead.

5 And so the talent that we bring in -- as we think about  
6 enduring advantages from a platform system perspective and the  
7 technology that's utilized in the changing nature of warfare,  
8 we have to have a force that is able to understand those  
9 requirements and to operate in an environment that is changing  
10 on a continual basis. And so having a workforce that is  
11 diverse and innovative is what's necessary for that.

12 Q. Is the judgment expressed here on page 11 still the  
13 department's judgment today?

14 A. It is.

15 Q. Excuse me. That was page 10.

16 Let's look at page 11 now, first paragraph.

17 This paragraph identifies "the United States' diversity as  
18 a strength that our competitors cannot match and part of the  
19 foundation for a defense strategy that will keep America  
20 secure, prosperous, and free."

21 Can you explain what this paragraph is talking about.

22 A. So as we think about one of the advantages that we have  
23 over our adversaries, it is the fact that we have a diverse  
24 society, that we have a society where many different views and  
25 perspectives are evaluated and understood, and that helps to

1 create a force that is able to engage in a wide range of issues  
2 and across the globe.

3 And so that gives us a unique strength as we compare  
4 ourselves to our pacing challenge, the People's Republic of  
5 China, and where we face acute threats in Europe from Russia.  
6 And so our heterogeneity and our ability to draw from a society  
7 that is diverse and has open-mindedness gives us strength.

8 Q. Is the judgment expressed here on page 11 still the  
9 department's judgment today?

10 A. It is.

11 Q. Is the 2022 national defense strategy the first time that  
12 the military has made the judgment that a diverse force is a  
13 strategic advantage?

14 A. No. The department has been focused on integrating and  
15 increasing the diversity of the force since post-World War II,  
16 when President Truman issued an executive order to integrate  
17 the force. And over time we've continued to make progress.

18 But we did see that, during the course of the conflict in  
19 Vietnam, when there was a lack of diversity in the officer  
20 corps and a difference in the diversity between the officer  
21 corps and the enlisted force, that that led to racial tensions  
22 and it led to a degradation in our capability. And so since  
23 that time, the department has been focused on improving our  
24 diversity and ensuring that we have an officer corps that  
25 understands the force that they lead and has a degree of

1 empathy and compassion that can understand that force and help  
2 to lead that force.

3 Q. Has the department's pursuit of increased diversity been  
4 limited to administrations of only one political party?

5 A. No. The department has been focused on improving  
6 diversity since -- again, since post-World War II and certainly  
7 increased emphasis following Vietnam and up to the current day.

8 Q. Is the Department of Defense a political institution?

9 A. The Department of Defense is not a political institution.  
10 In fact, the department prides itself on being apolitical.

11 Q. Let's look at DX177.

12 This document also is already in evidence.

13 This will be a memo from the Secretary of Defense dated  
14 June 19, 2020.

15 THE COURT: We don't have it on the screen yet,  
16 Ms. Yang. Thank you.

17 MS. YANG: There it is.

18 BY MS. YANG:

19 Q. Sir, which Secretary of Defense issued this memo?

20 A. This memo was issued by Secretary of Defense Esper.

21 Q. Let's look at the second paragraph on page 1.

22 Can you read into the record what the Secretary of Defense  
23 said here.

24 A. "To ensure the morale, cohesion, and readiness of the  
25 military, it is essential that our ranks reflect and are

1 inclusive of the American people we have sworn to protect and  
2 defend."

3 Q. In whose administration did Secretary Esper serve?

4 A. Secretary Esper served in President Donald Trump's  
5 administration.

6 Q. Is this still the same judgment the department continues  
7 to make today?

8 A. Yes, it is.

9 Q. Let's also look at the last paragraph on page 1.

10 This paragraph talks about impacts of bias and prejudice.

11 So, sir, what impacts do bias and prejudice have on the  
12 experiences of minority service members and their  
13 representation in the officer corps?

14 A. The -- if there's bias and prejudice within the military,  
15 that would lead people to believe that there is limited  
16 opportunity for them.

17 One of the things that we look for in the military is that  
18 it is an environment where anyone can succeed. Anyone who is  
19 interested in serving and volunteering, that they have the  
20 opportunity to succeed based on their merit and based on their  
21 capability.

22 So if there were any bias and prejudice in the military,  
23 that would inhibit someone's belief that they would have the  
24 ability to serve with distinction and to carry on through a  
25 career in the military.

1 Q. You've mentioned the department's pursuit of increased  
2 diversity. Does the pursuit of increased diversity include  
3 increased diversity among the officer corps?

4 A. Yes. It's across the enlisted ranks and the officer  
5 corps.

6 Q. At a general level, can you explain the main operational  
7 reasons why the department is pursuing increased diversity  
8 among the officer corps?

9 A. Increased diversity of the officer corps helps us from an  
10 operational perspective by improving unit cohesion and trust.  
11 And unit cohesion and trust is critical to the ability for a  
12 unit to carry out its mission. By increasing unit cohesion and  
13 trust, that increases communication, it increases a better  
14 understanding of mission requirements, and it increases trust  
15 in the officers that lead that particular unit.

16 Q. Again, at a general level, can you identify the main  
17 strategic reasons for the department's pursuit of increased  
18 diversity among the officer corps?

19 A. As a strategic level, the -- having diversity in the  
20 officer corps first helps us to innovate by having an officer  
21 corps that has an ability to see problem sets from different  
22 perspectives that increases innovation and, through that  
23 innovation, helps us to understand various risks and mitigate  
24 risks.

25 Diversity of the officer corps also helps us with

1 recruiting and retention. By having an officer corps that is  
2 reflective of the people that they lead and the nation that we  
3 serve, it creates a model for young people to join an  
4 organization where they think they can -- excuse me -- succeed  
5 based on their performance and their merits.

6 And then, as well as helping with recruitment, a diverse  
7 officer corps helps with retention, ensuring that those who are  
8 serving have the opportunity to advance and grow their  
9 capability over their profession through a career serving in  
10 the military.

11 And then the other area where a diverse officer corps  
12 helps us is increasing legitimacy of the military in the eyes  
13 of the people we serve as well as our partners and allies  
14 across the world and those that we engage with across the  
15 world.

16 Q. We'll talk about each of these in a little bit more  
17 detail. So let's start with cohesion and trust.

18 I believe you've already explained this in your previous  
19 answer, but can you remind us. Why is cohesion and trust  
20 important to the Department of Defense?

21 A. Cohesion and trust is particularly important to the  
22 Department of Defense because, as we think about the service  
23 members serving in a unit, having a higher level of cohesion  
24 and trust will ensure that there's good communication, a good  
25 understanding.

1 And so as those units conduct their training, it will  
2 improve their proficiency and their effectiveness and therefore  
3 their lethality. And so unit cohesion and trust has proven out  
4 to improve the effectiveness of the force, and as a result of  
5 being more effective, we mitigate risk.

6 Q. And what is the relationship between a diverse officer  
7 corps and greater cohesion and trust?

8 A. An officer corps that's diverse and is drawing from a  
9 range of different experiences. And through that range of  
10 different lived experiences, that officer corps is able to  
11 understand the people that they lead, that officer corps is  
12 able to address problems from different perspectives, having  
13 learned from people with different perspectives, and then be  
14 able to carry out a mission more effectively.

15 Q. Can you provide for the Court an example of this from your  
16 time in the service?

17 A. So as I served and the -- when I was serving on a  
18 submarine -- on a submarine that I served on, I was one of  
19 about 12 officers in the wardroom. I was the only officer of  
20 color. Our enlisted service members, there was more diversity  
21 in the enlisted ranks.

22 And I found that, as I was serving, I would have certain  
23 members of our crew who would reach out to me to engage just to  
24 gain a perspective of how to fit in within a crew where they  
25 were underrepresented. And so that created an avenue for



1 communication and trust.

2 It also gave me the opportunity to encourage them to  
3 engage with their chain of command, whether it was a sailor  
4 engaging with a lead petty officer or a chief petty officer or  
5 a division officer, to engage with them and increase their  
6 level of communication.

7 I can think of one particular instance where there was a  
8 young torpedoman who served in the weapons department where  
9 there were not very many minorities. This particular  
10 torpedoman was African American, and he was relatively new to  
11 the crew and he was trying to understand how he fit in. He  
12 engaged with me in a conversation. I shared my experience  
13 serving in the submarine course and encouraged him to have  
14 dialogue with his lead petty officer.

15 And so that was an example of having diversity or someone  
16 that maybe that young man could reach out to and have a  
17 conversation with.

18 **Q.** Has the officer corps become more racially diverse since  
19 the time you were an officer?

20 **A.** Since the time I served, the officer corps has become more  
21 racially diverse, more ethnically diverse, diverse across a  
22 number of different dimensions. As we think about diversity,  
23 it's not just race and ethnicity or other dimensions such as  
24 gender. And so the officer corps has become more diverse, and  
25 certainly seen within the submarine force a greater level of

1 diversity.

2 Q. In your view is it a good thing that the officer corps has  
3 become more diverse over time, including racially diverse?

4 A. In my perspective, and I think in the perspective of the  
5 department, having a more diverse officer corps had been  
6 beneficial. As a result, we've seen a greater level of  
7 communication and an improvement in the unit cohesion and  
8 trust.

9 Q. In your position, what have you observed about the force  
10 in terms of a diverse officer corps and greater cohesion and  
11 trust?

12 A. In my current position, what I've observed about diversity  
13 and the impact on cohesion and trust is that we've seen an  
14 improvement in the diversity. And as we have continued to  
15 understand the organizational climate -- we do an annual survey  
16 called the defense organizational climate survey -- we have  
17 seen the impact of improved diversity on the organizational  
18 climate and performance of units.

19 Q. It's been suggested in this case that skills and  
20 competence are what build cohesion, not diversity. What's your  
21 response to that?

22 A. I think that, in building unit cohesion and trust, there  
23 are a number of different factors that contribute. So skills  
24 and competency are important, but having an officer corps that  
25 is understanding of the individuals that they lead also leads

1 to cohesion and trust.

2 So it's not just one dimension or two dimensions; there  
3 are multiple dimensions that lead to cohesion and trust. And  
4 skills and competency are a part of that, but the ability for  
5 the officers to understand the people they lead, to be able to  
6 adjust their leadership style, and then to make sure that  
7 there's an inclusive environment where different perspectives  
8 are considered, that also leads to cohesion and trust.

9 Q. Has the Department of Defense found any evidence that  
10 increasing the diversity of the officer corps detracts from  
11 cohesion and trust?

12 A. I'm not aware of any evidence that diversity has led to a  
13 reduction in cohesion and trust.

14 Q. You also mentioned innovation. And so can you remind the  
15 Court why innovation is important to the Department of Defense?

16 A. Innovation is particularly important to the department  
17 because, as the changing nature of warfare and as we face  
18 adversaries who are developing their capabilities rapidly and  
19 adjusting to the capabilities that they are seeing on the  
20 battlefield, that requires our force to be able to adapt and  
21 adjust and understand different risks and mitigate for those  
22 different risks.

23 Q. What is the relationship between a diverse officer corps  
24 and greater innovation?

25 A. Diverse officer corps, one that has been exposed to

1 different experiences, that has considered different ways to  
2 solve problems, and has developed a level of cultural  
3 competency helps to improve our ability to innovate and address  
4 challenges as they emerge in different operations and on the  
5 battlefield.

6 **Q.** From your observations of the force in your current  
7 position, have you seen anything demonstrating this  
8 relationship between a diverse officer corps and greater  
9 innovation?

10 **A.** As I've observed in my current position and then from  
11 reflecting on the history of our force and studying the history  
12 of our force, we've seen areas where, by improving the  
13 diversity of the force, we have had better effectiveness on the  
14 battlefield and ways to address challenges in the field.

15 I'll point to the example during the global war on terror  
16 when women were included in combat units. And particularly in  
17 Iraq and Afghanistan, the inclusion of women in combat units  
18 led to the ability for those units to engage more effectively  
19 with the communities that they engaged with. Women in those  
20 combat units allowed for a level of communication that improved  
21 with the communities that our service members and units were  
22 engaged and, as a result, improved the effectiveness.

23 **Q.** Is the department assuming that officers who are women or  
24 who are from a particular racial group will have a particular  
25 perspective?

1 A. The department doesn't presume that, just based on one  
2 dimension of diversity, whether it's gender, race, or  
3 ethnicity, that anyone would have a particular perspective.

4 Q. And so what is the connection the department is making  
5 between a diverse officer corps and diversity of perspectives?

6 A. As we think about the diverse officer corps, it's really  
7 people coming from different backgrounds and experiences. And  
8 so dimensions of diversity such as race, ethnicity, gender,  
9 sexuality, those contribute to an individual's lived experience  
10 and their unique experience.

11 And it's through that diverse set of unique experiences  
12 that helps and leads to an officer corps that can understand  
13 different people, understand different situations, develop a  
14 level of cultural competency to address challenges that that  
15 unit might face depending on how they're employed.

16 Q. Is there any evidence that increasing the diversity of the  
17 officer corps makes the military less innovative?

18 A. I'm not aware of any evidence that increasing diversity  
19 makes us less innovative.

20 Q. Let's move on to recruitment. Can you explain why  
21 recruitment is important to the Department of Defense?

22 A. Recruitment is particularly important for the Department  
23 of Defense since we are an all-volunteer force and we aspire to  
24 be an all-professional force. And so bringing in service  
25 members from various backgrounds, various experiences, various

1 capabilities, having a diverse officer corps, helps us to  
2 ensure that we can draw from the diverse talent of the U.S. in  
3 drawing from, really, the strength of the U.S., which -- one of  
4 the strengths of the U.S., which is our diversity.

5 **Q.** Why does having a diverse officer corps help ensure that  
6 you can draw from the strengths of the U.S., including its  
7 diversity?

8 **A.** Having a diverse officer corps really creates a model for  
9 young people as they look at the service. For them to see that  
10 people of various backgrounds, particularly if someone is from  
11 an underrepresented community, that someone from their  
12 background, their experience will have an opportunity to serve  
13 and to advance in the military.

14 **Q.** Have you had any experiences demonstrating this  
15 relationship between a diverse officer corps and recruitment?

16 **A.** My experience -- I think my experience is really based on  
17 two different perspectives -- one from a personal perspective  
18 and then from my professional perspective.

19 So from a personal perspective, I've had discussions with  
20 young people in my neighborhood, my community, who are  
21 interested in serving. And so they have asked about what it's  
22 like to serve in the military, what sorts of opportunities are  
23 there in the military? And I've been able to share my  
24 experience and my perspective that those who serve in the  
25 military can advance based on their capabilities, based on

1 their merits, and that there are no limitations based on any  
2 particular measure or dimension of diversity.

3 That also -- personal perspective is informed through my  
4 son who serves currently as a Marine. As he was considering  
5 his service, he thought about what the diversity of the force  
6 meant. He currently serves in the infantry and as a  
7 recognizance officer. There are very view South Asians who  
8 served in that MOS. So he will occasionally get people who  
9 reach out to him and ask him what it's like to serve.

10 So having an officer corps that's diverse, so in this case  
11 a South Asian, someone who young people can engage with, to  
12 understand what it's like to serve, creates an avenue for  
13 discussion and an avenue for understanding.

14 I can reflect on a particular instance when I was visiting  
15 at the United States Military Academy and a cadet who was from  
16 South Asia -- South Asian heritage. He had read my bio, and he  
17 knew that my son was serving in the Marine Corps in the  
18 infantry, and he had an interest in serving in the infantry.  
19 So he was interested in my son's perspective. Simply put them  
20 in touch and for them to have a discussion.

21 So having a diverse officer corps create an avenue and an  
22 opportunity for people to engage with people of either same or  
23 similar background or people with different backgrounds to  
24 understand what it's like to serve in the military.

25 **Q.** Have you had any experiences in your personal -- excuse

1 me -- your professional experience in your current position  
2 that demonstrate this relationship?

3 A. So in my professional capacity as undersecretary and when  
4 I was the deputy undersecretary, engaging in different  
5 communities. So in my visits to different installations across  
6 the U.S., I've had the opportunity to engage with young people  
7 and with people who influence them, and they will ask about  
8 what the opportunities are within the military and how people  
9 can continue their service as well as what the opportunities  
10 are for people who are underrepresented.

11 So it gives me the opportunity to share that the military  
12 really is a meritocracy and a place where people from all  
13 different backgrounds and experiences can succeed.

14 As we increase the diversity of the officer corps, that  
15 creates an environment where those who come with different  
16 experiences can have a level of discussion, dialogue with their  
17 leadership to ensure that they understand the unit they're  
18 serving in and how they can serve.

19 Q. Is the department currently experiencing recruitment  
20 challenges?

21 A. The department is experiencing recruitment challenges.  
22 Those challenges are impacted by a very strong economy, which  
23 makes for a tight labor force. We also have a shrinking  
24 veteran population, and so there is a lesser degree of  
25 familiarity with the military.



1 And through those factors as well as other factors, young  
2 people who -- a diminishing pool of young people who qualify  
3 for military service, either based on their academic  
4 performance, based on their physical capabilities, or based on  
5 moral factors, we have a shrinking pool. So that has created a  
6 challenge from us from a recruiting standpoint.

7 Q. Is the department's effort to become more diverse and  
8 inclusive among the reasons for its recruitment challenges?

9 A. I believe, I'm not aware that our focus on increasing  
10 diversity has impacted our ability to recruit. That's not one  
11 of the challenges that I'm aware of.

12 Q. Let's talk about the flip side of retention.

13 How important is retention to the Department of Defense?

14 A. So retention is also critical as an all-volunteer force.  
15 One of the things that distinguishes our force from many others  
16 is the fact that we're all-volunteer force but that through our  
17 all-volunteer force we've developed a noncommissioned officer  
18 corps that is admired by our peers and adversaries. And so in  
19 order to develop a professional officer corps, we need to  
20 retain capabilities and talents.

21 As I mentioned earlier, the skills and requirements and  
22 capabilities of our force are continuously changing because of  
23 the changing nature of warfare. And so in order to retain  
24 that, we need to retain those skills and capabilities and  
25 particularly as we innovate so that we can understand how to

1 utilize new technologies and new approaches in order to meet  
2 our -- those increasingly dynamic challenges and ensure that we  
3 take full advantage of the people and platforms and systems.

4 Q. How would you describe current retention levels?

5 A. Our retention levels have been very high and in certain  
6 cases historically high. So we're doing quite well on the  
7 retention front.

8 Q. What is the relationship between a diverse officer corps  
9 and higher retention?

10 A. As we improve the diversity of our officer corps, that  
11 leads to the fact that people who are serving, particularly at  
12 the junior ranks, see that they can continue to succeed; that  
13 regardless of their particular background, their race, their  
14 ethnicity, their gender, that there's an opportunity for them  
15 to carry on in the military and advance to a senior level.

16 Q. Is there any evidence that service members are leaving the  
17 military because they think there's too much focus on diversity  
18 and inclusion?

19 A. I'm not aware of any evidence that people are leaving  
20 because of diversity and inclusion.

21 Q. In contrast, is there evidence that service members leave  
22 the military when they experience unhealthy diversity and  
23 inclusion climates?

24 A. I'm aware that, as we've look at the climates -- the  
25 climate regarding diversity and inclusion, that when there's a

1 healthy climate related to diversity and inclusion, we see  
2 higher level of individual and unit readiness as well as  
3 retention.

4 When there is -- when the diversity and inclusion climate  
5 is unhealthy, then we see higher rates of people who are  
6 considering leaving the service.

7 Q. Is there a particular study or survey that you're thinking  
8 of?

9 A. I'm thinking of -- the findings that I'm pointing to are  
10 from an Office of People Analytics study that looked at  
11 specifically the impact of the health of the diversity and  
12 inclusion climate and the impact that has on individuals,  
13 particularly on readiness, individual and unit readiness, and  
14 desire to stay in the force.

15 Q. Let's look at P275. This document is already in evidence.

16 Sir, is this the Office of People Analytics study that you  
17 just referred to?

18 A. Yes, it is.

19 THE COURT: Plaintiff's exhibit number what?

20 MS. YANG: 275.

21 THE COURT: This is already in evidence, I believe.

22 Thank you.

23 BY MS. YANG:

24 Q. Sir, is this the Office of People Analytics study that you  
25 just referred to?

1 A. Yes, it is.

2 Q. Let's move on to legitimacy.

3 Can you explain why it's important for the military to  
4 have legitimacy?

5 A. It's important for the military to have legitimacy from a  
6 couple of different perspectives. The first is legitimacy for  
7 the nation that we serve.

8 As we have a diverse military and diverse officers corps,  
9 that demonstrates the fact that the military is representative  
10 of a nation with diverse values and democratic values and that  
11 there's an opportunity for all who serve and that that military  
12 will carry out the missions of the people that we serve.

13 Q. So you mentioned that's one of the perspectives for  
14 legitimacy. Is there another perspective for legitimacy?

15 A. The second perspective is our legitimacy with those that  
16 we engage around the world. So with our allies and partners,  
17 it's important for us to demonstrate our legitimacy.

18 The fact that we have a diverse force and a diverse  
19 officer corps leads to a greater level of legitimacy, again,  
20 demonstrating the values of the people of the United States.  
21 And so that helps to improve our ability to engage, to show the  
22 values of the U.S.

23 The diversity of the officer corps also helps us to  
24 improve our cultural understanding and our cultural competency,  
25 and that helps with our legitimacy as well with our allies and

1 partners.

2 Q. Is the department's view that minority officers are going  
3 to be more culturally competent than White certificates?

4 A. It's not the view of the department that White officers or  
5 an officer of a particular race or gender or diversity would be  
6 more culturally competent.

7 Q. What is the department's view with respect to a diverse  
8 officer corps and cultural competency?

9 A. The department's view is that, if we have an officer corps  
10 that is diverse, that brings a range of experiences, unique  
11 experiences and backgrounds, that as those officers train, as  
12 those officers are formed, whether -- particularly at the  
13 military service academies, that they will have a better  
14 understanding of unique experiences and that they will develop  
15 cultural competency, that they will develop an understanding of  
16 how to engage with people of different backgrounds and  
17 experiences and, as a result, lead to improved cohesion and  
18 lead to improved ability to assess risk and help us with  
19 recruiting and retention and then leading to that legitimacy.

20 Q. Is there any evidence that increasing the diversity of the  
21 officer corps makes the military less legitimate?

22 A. I'm not aware of any evidence that indicate that.

23 Q. After individuals enter the military, does the Department  
24 of Defense generally consider their race or ethnicity when  
25 making personnel decisions?

1 A. After someone enters the military, race or ethnicity are  
2 not considered or generally not considered in making personnel  
3 decisions.

4 Q. Why not?

5 A. The military really prides itself on being a meritocracy  
6 where people are advanced based on their capabilities, based on  
7 their merit; and so promotion and assignment decisions are  
8 based on that. And assignment decisions will also consider  
9 whether or not an individual has the right skills or  
10 capabilities to fill a particular assignment. So race is not  
11 considered.

12 Q. What are the primary accession sources for military  
13 officers?

14 A. The primary accession sources for military officers are  
15 the military service academies, the ROTC programs, and officer  
16 candidate school.

17 Q. Does the Department of Defense consider race in ROTC or  
18 officer candidate school accessions?

19 A. The department does not consider race in ROTC or OCS  
20 accessions.

21 Q. Why does the department not consider race for OCS  
22 accessions?

23 A. For OCS accessions, when we bring officers through that  
24 accession channel, there are a couple of different things that  
25 we're doing there. One is we're helping to bring in people

1 with specific skills. So when we're assessing medical corps  
2 officers, attorneys, an OCS will be that channel.

3 We also -- those individuals who come in through OCS have  
4 earned their degrees at a particular college or university, and  
5 so they have been -- we're hopeful that they have developed a  
6 level of understanding of diversity through their education at  
7 those units and colleges.

8 OCS is also a channel or source for commissioning for  
9 enlisted service members. And currently our enlisted force is  
10 more diverse than our officer, and so that creates a more  
11 diverse pool to draw from.

12 **Q.** How about ROTC? Why does the department not consider race  
13 in ROTC accessions?

14 **A.** For ROTC accessions, the -- we depend on the colleges or  
15 universities where the ROTC programs are placed, that they will  
16 utilize their admission standards to ensure that they bring in  
17 people from different backgrounds and then educate them within  
18 that particular environment.

19 We also have the ability through the placement of ROTC  
20 programs at different colleges and universities to influence  
21 the diversity of the force; so, for example, placement of an  
22 ROTC unit at a historically Black college or university or a  
23 minority-serving institution can help us with making  
24 improvements in the diversity of our officer corps.

25 **Q.** Do you understand that the Naval Academy considers race to

1 some extent during its admissions process?

2 A. I do understand that the Naval Academy uses race in a  
3 limited manner in their admissions process.

4 Q. Why does the Department of Defense permit the Naval  
5 Academy to consider race to some extent in admissions?

6 A. The department allows for the limited consideration of  
7 race at the military service academies because, first of all,  
8 they're our lead institutions; they're institutions that are  
9 designed specifically for those midshipmen or cadets who are at  
10 the service academies to be immersed in the military  
11 environment and the military culture and where they will be --  
12 they'll be educated in the history of and the customs and  
13 values of the military.

14 As an elite institution, they have very rigorous  
15 admissions requirements. So the first consideration is does an  
16 individual meet those rigorous qualifications to gain admission  
17 into the service academy?

18 By allowing for a limited use of race in the admissions  
19 process, we ensure that we have a mix and the diversity at the  
20 military service academies that will help to -- those  
21 individuals who are training there to gain a perspective of  
22 people with different perspectives, different backgrounds,  
23 different lived experiences.

24 Another consideration is that the service academies, we  
25 find that graduates of the military service academies tend to



1 stay in the service, and then we see a higher representation of  
2 senior officers from the military service academies. So they  
3 place a disproportionate role, the military service academies,  
4 on the officer ranks.

5 Q. Do you think the Naval Academy, considering race in  
6 admissions, is inconsistent with the Department of Defense  
7 being a meritocracy?

8 A. I do not think that consideration for race as -- limited  
9 consideration of race is inconsistent with being a meritocracy.  
10 The race is considered as admissions decision, and once someone  
11 is admitted and once they're sworn in and become a cadet or  
12 midshipman, from that point forward they're subject to  
13 performance standards that are based on their merit and their  
14 performance.

15 Q. It's been suggested in this case that the military is  
16 lowering its standards for military -- excuse me -- for  
17 minority officers.

18 What's your response to that?

19 A. We have not lowered standards for individuals to access  
20 into the military. In fact, I think if we had lowered  
21 standards for those to access into the military, we wouldn't be  
22 facing the recruiting challenges that we have today.

23 Q. What have you observed about the quality of officers  
24 commissioning from the Naval Academy?

25 A. It's my observation that the quality of officers continues

1 to prove over time from the graduates from the service  
2 academies as well as our other accession sources.

3 Q. How is the department doing today in terms of the  
4 diversity of the officer corps?

5 A. We are making improvements, we're making progress on the  
6 diversity of the officer corps. We continue to see that we  
7 make progress, but we are not where we'd like to be. We have  
8 certain -- there are certain dimensions or categories of people  
9 where we were underrepresented.

10 So, for example, our representation of women in the  
11 service and officer corps is less than what we see; so the  
12 officer corps has fewer women than in the enlisted force and  
13 fewer women than in the general population. We also see that  
14 in certain race and ethnicity groups.

15 So while we have room for progress, we are making progress  
16 and we continue to monitor the progress.

17 Q. Has the department set a specific number for the amount of  
18 diversity it wants?

19 A. The department has not set a specific numeric objective  
20 for diversity. Our objective really is to ensure that the  
21 officer corps is reflective of the people, the enlisted force  
22 that the officer corps leads, and that the force overall is  
23 reflective of the nation that we serve.

24 So while we have not set a specific numeric objective, one  
25 of the things we do is we continue to ensure that we are making

1 progress against those goals.

2 Q. Is it the department's view that White officers cannot be  
3 effective leaders?

4 A. That is not the department's view.

5 Q. Is the department's view that a minority officer is  
6 necessarily going to be an effective leader?

7 A. That is not necessarily the department's view.

8 Q. What is the department's view when it comes to leadership  
9 in a diverse officer corps?

10 A. The department's view is that there are many different  
11 capabilities and skills that lead to effective leadership.  
12 It's the department's view also that having a diverse officer  
13 corps and particularly in the training environment, that having  
14 a diverse officer corps and exposing individuals to people of  
15 different backgrounds, experiences, and capabilities will help  
16 officers to develop a leadership capability that help them lead  
17 in an environment where we have a diverse enlisted force and we  
18 have a different range of skills and capabilities.

19 And so it's really that range of diversity that leads to  
20 officers who have a capability to build unit trust and  
21 cohesion.

22 Q. Is the department's view that the military mission will  
23 necessarily fail if there's a lack of diversity in the officer  
24 corps?

25 A. It's not the department's view that a lack of diversity

1 will lead to mission failure. Really, on the contrary, it's  
2 that, by having more diversity, we will be able to mitigate  
3 risk and actually contribute to our ability to effectively  
4 carry out our mission.

5 Q. Does the department have experience with what can happen  
6 when there is a lack of diversity in the officer corps?

7 A. We've experienced -- and part of the reason for the focus  
8 on diversity is that the experience that the department had  
9 through the Vietnam era and during the Vietnam War was that  
10 there was an officer corps that was not diverse, leading a  
11 force that was -- had much greater diversity; and that led to a  
12 lack of unit cohesion, a lack of trust, diminishment of the  
13 capability.

14 So that is something that the department would want to  
15 avoid, is that disparity in diversity.

16 Q. It's been suggested that the experience you just mentioned  
17 is in the past and it doesn't affect the present.

18 What's your reaction to that?

19 A. My reaction is that the department is a learning  
20 organization and it really goes back and looks at the history  
21 and tries to understand the factors that have contributed to  
22 its ability to perform effectively or impact the effectiveness  
23 of performance.

24 So from learning from that history and from addressing  
25 those factors, the department has been able to mitigate those

1 risks by increasing the diversity of the force.

2 **Q.** Is the department willing to risk repeating the  
3 experiences it had when the diversity of the officer corps was  
4 missing?

5 **A.** No. I think the department is not willing to repeat that  
6 risk or repeat those practices that would lead to increased  
7 risk and our lack of ability to mitigate those risks.

8 **Q.** Why not?

9 **A.** Well, I think if we were to -- to go backward in that  
10 regard, that would be really somewhat a dangerous experiment.  
11 We would be -- by having a lack of diversity that would lead to  
12 a lack of unit cohesion and trust, that could lead to our units  
13 being subjected to increased risk or inability to mitigate  
14 risk, and as we send our young people into -- into missions,  
15 that could lead to mission failure, that could lead to mission  
16 failure from the standpoint of loss of life.

17 So we want to ensure that we mitigate those risks and not  
18 repeat those same mistakes.

19 **MS. YANG:** Thank you, sir. Nothing further at this  
20 time.

21 **THE COURT:** Thank you, Ms. Yang.

22 Mr. Mortara, good morning.

23 **MR. MORTARA:** Good morning, Your Honor. Am I on,  
24 Jakiba?

25 **THE CLERK:** Yes.

1           **MR. MORTARA:** Just a moment, Your Honor, while I set  
2 up.

3           **THE COURT:** Take your time.

4                           **CROSS EXAMINATION**

5 **BY MR. MORTARA:**

6 **Q.** Good morning, Undersecretary Vazirani.

7 **A.** Good morning.

8 **Q.** Did I get that right?

9 **A.** Vazirani, yes.

10 **Q.** Vazirani. Excuse me, excuse me.

11 I want to make sure that I heard correctly the definition  
12 of "diversity" that you've been using throughout your  
13 testimony.

14 The DoD definition of diversity is all the different  
15 characteristics and attributes of the DoD's total force, which  
16 are consistent with DoD's core values, integral to overall  
17 readiness and mission accomplishment, and reflective of the  
18 nation we serve.

19 Is that the definition you were using?

20 **A.** That's correct.

21 **Q.** You also said you were referring to diversity broadly in  
22 many aspects of -- including diversity racial, ethic, gender,  
23 geographic diversity?

24 **A.** Yes, that's correct.

25 **Q.** And that also includes gender identity diversity, correct?

1 A. That's correct.

2 Q. And including people who are transgender?

3 A. That's correct.

4 Q. And religious diversity?

5 A. That is correct.

6 Q. You believe all these aspects of diversity are important  
7 for DoD to successfully meet its mission, correct?

8 A. I do believe that.

9 Q. I want to make sure I understand. It's your view that a  
10 ship, like a destroyer or aircraft carrier or submarine, will  
11 perform its mission better if the officer corps is diverse  
12 across all of these dimensions, correct?

13 A. It's my belief that, if we have an officer corps that has  
14 diversity, that we will develop an officer corps that has a  
15 greater ability to understand the risks that they face as well  
16 as the ability to lead a diverse force.

17 Q. Across all the dimensions, correct?

18 A. Across many different -- I think when we look at those  
19 dimensions, it's really around how do we have an officer corps  
20 that has unique experiences, unique backgrounds, and an  
21 understanding of the differences that people bring to their  
22 service.

23 Q. Is the United States DoD -- is the military in America  
24 more diverse than China's military with respect to gender  
25 identity?

1 A. I don't have specific understanding of the China's  
2 military with respect to gender identity, but I would -- I  
3 would believe that we are.

4 Q. And sexual orientation as well, probably?

5 A. Again, I don't have specific knowledge of China's --

6 Q. What would you guess?

7 A. My guess is we would have a greater level of diversity.

8 Q. That's an advantage over our enemies, in your view?

9 A. I think the advantage is, when we look at diversity, it's  
10 not across one specific dimension; it's across a range of  
11 dimensions. By looking across that broad range of dimensions  
12 of diversity, that we can create a force that has an ability to  
13 understand the differences in people; and so that increases our  
14 leadership, and it increases our ability to understand the  
15 forces that we may engage.

16 Q. And that's an advantage over our enemies?

17 A. That is correct.

18 Q. Undersecretary Vazirani -- did I get that right?

19 A. Yes. Feel free to call me Mr. Vazirani.

20 Q. Thank you, Mr. Vazirani.

21 I am now showing you on the screen Plaintiff's  
22 Exhibit 275, which you discussed with my colleague from the  
23 Justice Department. This is the OPA study.

24 Do you remember that?

25 A. Yes, I do.



1 Q. And you didn't actually go inside the study at all, did  
2 you?

3 A. I'm sorry?

4 Q. In your direct testimony, you didn't actually look inside  
5 the study?

6 A. Not during the direct testimony.

7 Q. But you have?

8 A. I have.

9 Q. I'm going to show you what's an executive summary  
10 romanette iii, and it discusses the five different clusters,  
11 five climates that were identified.

12 That is in your binder, if you need it on paper, at  
13 Defense Exhibit 43. So D43. We have a lot of duplicates on  
14 the exhibit list, but if you want to follow along on paper. I  
15 also have it on the screen. It's at romanette iii. There's  
16 five climates that are discussed here, correct?

17 A. That is correct.

18 Q. The healthy D&I climate was 40 percent of the survey  
19 respondents, correct?

20 A. That is correct.

21 Q. Then 18 percent of the respondents said there was too much  
22 attention paid to D&I in the military, correct?

23 A. That is correct.

24 Q. And then 15 percent were ambivalent, correct?

25 A. That is correct.

1 Q. 15 percent had been a bystander to sexist and racist  
2 slurs.

3 Do you see that?

4 A. I do.

5 Q. And then 12 percent said that there was an unhealthy D&I  
6 climate.

7 Do you see that?

8 A. I do.

9 Q. So the percentage of people who thought there was too much  
10 attention paid to D&I in the military exceeded the unhealthy  
11 D&I climate in this study, correct?

12 A. That is correct.

13 Q. Now I'm going to turn to what is page 13 in the study and  
14 some of the results.

15 You ready?

16 A. I am.

17 Q. Can you see that?

18 Okay. Great.

19 So we have here the five climates -- healthy, too much  
20 attention, ambivalent, bystander, unhealthy -- and then some  
21 survey responses along the left side.

22 I'd like to focus you on the military D&I climate and the  
23 unhealthy group. These are the people who said that the D&I  
24 climate in the military is unhealthy.

25 22 percent of those people -- down here -- said that the

1 reason -- or one of the reasons -- excuse me -- one of the  
2 reasons the military has an unhealthy D&I climate is too much  
3 attention is paid to racial and ethnic harassment and  
4 discrimination.

5 Do you see that?

6 A. I do.

7 Q. So even in the unhealthy group, some of the people think  
8 too much attention is being paid to presumably racial and  
9 ethnic harassment and discrimination training, which is  
10 received a lot by people in the military, correct?

11 A. Yes. But I think that you could look at that and say that  
12 78 percent of the people, as it points in the table, think  
13 there's the right amount of attention or, in certain cases,  
14 half of those then saying too little attention.

15 Q. Let's just be clear. I want to spend some time on this  
16 because we have it.

17 Of the people who have the perception that everything is  
18 healthy, essentially 1 percent say too much attention is paid  
19 to race and ethnic harassment. They think it's just right.  
20 That's what the survey shows, right?

21 A. Correct.

22 Q. Of the people who think there's too much attention  
23 generally to D&I issues, 80 percent of them think there's also  
24 too much attention paid to racial and ethnic harassment and  
25 discrimination training, correct?

1 A. That's also correct.

2 Q. But in the unhealthy group, the people who just reported  
3 that the D&I environment in the military is unhealthy,  
4 something like close to a quarter of them also think there's  
5 too much attention paid to racial and ethnic harassment and  
6 discrimination training, correct?

7 A. That's also correct.

8 I think that, as we look at those different groups, the  
9 groups that reported a healthy or too much attention paid are  
10 predominantly White and that the group that has an unhealthy  
11 climate has a higher percentage of those who are from  
12 underrepresented groups. And so --

13 Q. I'm curious. Why does that matter?

14 A. I think that, as we think about the ability to attract and  
15 retain people, is an understanding of what is the health or the  
16 inclusivity of an organization. And so, as we think about the  
17 inclusivity of an organization and the ability to build unit  
18 cohesion and trust, having a healthy climate is important to  
19 that.

20 Q. Within the group that says the D&I climate is unhealthy,  
21 there could be Black people, White people, South Asian people,  
22 right?

23 A. That's correct.

24 Q. And some of those people, irrespective of their skin  
25 color, might think the D&I climate in the military is unhealthy

1 because too much attention is paid to stuff like racial and  
2 ethnic harassment and discrimination training, right?

3 A. I'm not sure that we can draw the conclusion that says  
4 that the level of attention paid to it is what is contributing  
5 to the D&I climate.

6 Q. Well, these people said there's too much attention paid to  
7 this stuff, and they're in the unhealthy group, right?

8 A. That is correct.

9 Q. And it doesn't matter what their skin color is. You can't  
10 infer what somebody believes based on their skin color, can  
11 you?

12 A. You cannot.

13 Q. I'd like to turn a few pages later to this table on  
14 readiness and retention outcomes, which is on page 16.

15 And, again, in the unhealthy group, there's a retention  
16 intention. And you see that the people in the unhealthy group  
17 and the people in the too-much-attention group have expressed  
18 an intention that it is unlikely they will stay in the military  
19 or experience retention, correct?

20 A. That is correct.

21 Q. And the percentage is higher in the unhealthy group,  
22 correct?

23 A. That is correct.

24 Q. And some of those people might be some of the people in  
25 the 22 percent we just discussed who thought too much attention

1 was paid to racial and ethnic harassment training, correct?

2 A. It's possible.

3 Q. You believe -- or I think you testified on direct that  
4 consideration of race in promotion decisions in the military is  
5 prohibited, correct?

6 A. That is correct.

7 Q. And you also said that the military does not consider race  
8 in assignment decisions, right?

9 A. That is correct.

10 Q. But you don't know whether it's a policy, rule, or a law  
11 that stops the consideration of race in assignment decisions,  
12 do you?

13 A. I'm sorry. If you could repeat.

14 Q. Is it DoD policy that stops the consideration of race in  
15 assignment decisions?

16 A. It is DoD policy that we don't consider race for  
17 assignment decisions.

18 Q. Who can change DoD policy?

19 A. The Secretary of Defense or the military department  
20 secretaries or, depending on what particular authority, that  
21 can be changed.

22 Q. So the Secretary of the Defense Lloyd Austin could change  
23 DoD policy?

24 A. He could.

25 Q. Is it possible that the Secretary of the Navy -- what is

1 his name?

2 A. Carlos Del Toro.

3 Q. Could he change Navy policy as it pertains to assignments  
4 in this matter?

5 A. He could change policy.

6 Q. You gave a declaration in this case, correct?

7 A. I did.

8 Q. It's Plaintiff's Exhibit 265. You should find it in your  
9 binders.

10 I'm going to show you something from paragraph 13 where  
11 you testified at the preliminary injunction stage, "It is  
12 important to DoD that it maintain the ability and autonomy to  
13 make personnel and other decisions, including military academy  
14 admissions decisions, which advance its diversity and inclusion  
15 interests as it works to build and maintain a ready force with  
16 a competitive advantage against our adversaries and execute  
17 national defense and security imperatives."

18 Do you remember saying that?

19 A. I do.

20 Q. DoD wants to have maximum autonomy to make personnel  
21 decisions to advance diversity and inclusion, correct?

22 A. The DoD wants to maintain autonomy to make those  
23 decisions, that's correct.

24 Q. And that is because what's written in the next paragraph I  
25 now have highlighted, diversity, all the types we discussed,

1 including racial and ethnic diversity of the officer corps, is  
2 a critical component of mission readiness. You discussed that  
3 with Ms. Yang, right?

4 A. That is correct.

5 Q. So DoD wants maximum autonomy and a racial and ethnic  
6 diversity of the officer corps as a critical component of  
7 mission readiness. Would you agree with both those statements?

8 MS. YANG: Objection, Your Honor. The witness did not  
9 say maximum autonomy.

10 THE COURT: Overruled.

11 THE WITNESS: My statement says that the department  
12 would want to maintain the ability and the autonomy to make  
13 personnel and other decisions. So it's in our ability now, the  
14 ability we have today, to make those types of decisions.

15 BY MR. MORTARA:

16 Q. Let's talk about the Navy. You have experience with the  
17 Navy both as a civilian in the Department of the Navy and, of  
18 course, as an officer, correct?

19 A. Correct.

20 Q. You would agree with me that three communities within the  
21 unrestricted line of the Navy are particularly nondiverse in  
22 the officer corps -- SEALs, submarines, and aviation, right?

23 A. That is correct.

24 Q. You've heard of Task Force One Navy, haven't you?

25 A. I have heard of that.



1 Q. It's in your binder, Plaintiff's Exhibit 600.

2 You've read Task Force One Navy before?

3 A. I've not read it completely.

4 Q. Ah. Well, I'm going to point out that Task Force One  
5 Navy, just to remind you, was commissioned on July 1st, 2020.

6 Does that sound about right to you?

7 A. Sounds about right.

8 Q. And in Task Force One Navy there's a depiction of the  
9 current state starting at page 15, and then there's a snapshot  
10 of the officer corps at page 16 that I want to talk to you  
11 about.

12 MR. MORTARA: And just orienting the Court, this is  
13 from 2020, of course.

14 THE COURT: What number are you on?

15 MR. MORTARA: Plaintiff's 600, Your Honor.

16 BY MR. MORTARA:

17 Q. Here you see the officer corps of all communities by race,  
18 correct?

19 A. What page are you referring to?

20 Q. I'm on page 16.

21 Have you found it?

22 A. Yes. This is -- you said this is across all communities.  
23 I think it's really based on the officer's grade, not  
24 community.

25 Q. It says all -- sorry. Maybe I misspoke.

1 This is the officer corps for all communities --

2 A. I see.

3 Q. -- and it's organized by race, correct?

4 A. It's aggregated across all -- yes, sir.

5 Q. And there's the different -- what do you call the 01  
6 through 10? -- different ranks.

7 A. Ranks, uh-huh.

8 Q. Right. Different ranks.

9 And you can see, actually, that Black representation in  
10 the officer corps is relatively stable until about 06, then it  
11 starts to fall off quite dramatically, particularly at 07; is  
12 that right?

13 A. That is correct.

14 Q. Now, there are very few total flag officers in the Navy,  
15 correct? I mean, flag officer is 07 and above, correct?

16 A. Correct.

17 Relative to the total officer corps, that's correct.

18 Q. And of those flag officers -- this is all communities --  
19 some subset of them are unrestricted line or come from the  
20 unrestricted line, right?

21 A. That's correct. I'd say that in the flag officer rank --  
22 so 07 and above -- those -- those ranks would be -- you'd see a  
23 higher percentage of those coming from the unrestricted line.  
24 And so that -- and when we look at the unrestricted line, one  
25 of the primary sources for generating officers in the

1 unrestricted line is the military service academies.

2 **Q.** Thank you. That's exactly where I was going.

3 Is one of the reasons that the U.S. Naval Academies are  
4 using race in admissions today is to provide -- to fix the  
5 problem you see at 07 with the drop-off in, for instance, Black  
6 flag officers?

7 **MS. YANG:** Objection, Your Honor.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** So the limited consideration -- and I  
10 think you'd have to speak with the director of admissions at  
11 the Naval Academy on how they specifically use admissions; but  
12 as we think about the diversity of the officer corps, we want  
13 to ensure that we are able to have a pipeline of diverse  
14 officers and that, as officers are promoted through the ranks,  
15 that there is consideration of their capabilities, their merit,  
16 and their -- but one of the things we also know is that the  
17 unrestricted line is an area where there is a greater focus  
18 because, at the flag officer rank, you have more of the,  
19 quote/unquote, warfighting specialties or capabilities.

20 And so as we think about the diversity of the officer  
21 corps, we want to ensure that there is diversity across all of  
22 the MOSs.

23 **BY MR. MORTARA:**

24 **Q.** And that includes getting to flag officer, which the Court  
25 expressed concern about, I think, numerous times, right?

1 A. We would want to see that there is -- that there is an  
2 underrepresentation, particularly based on when we look at the  
3 makeup of the officer corps, that the senior ranks are  
4 reflective of the full officer corps and then also the people  
5 that they lead.

6 Q. And that's one of the reasons that the Department of  
7 Defense is allowing the service academies to use race in  
8 admissions, here, the Naval Academy, correct?

9 A. That's something that I think you'd specifically have to  
10 ask the admissions director. But it is one of the areas that  
11 we look at when we look at the diversity of the officer corps,  
12 are we seeing a level of diversity amongst the senior officers?

13 Q. Well, Mr. Vazirani, you told my friend from the Justice  
14 Department that the DoD is permitting the military academies to  
15 use race, right?

16 A. That is correct.

17 Q. And it has to have reasons to do that, right?

18 A. That's right.

19 Q. So my question is only is one of the reasons that the DoD  
20 is permitting the use of race at the U.S. Naval Academy the  
21 hopes that, in doing so, this situation you see on the screen  
22 with the underrepresentation of Blacks at O7 and above will  
23 potentially be rectified in part by that action?

24 A. We believe that, as we bring in -- when we have a class of  
25 midshipmen or cadets at the service academies that are

1 representative of the communities that we draw from, that we  
2 would see that we would continue to have that level of  
3 representation across all the different ranks.

4 Q. How long does it take to make it to O7?

5 A. Depending on the particular service, that could be  
6 anywhere from 25 to -- 25-plus years to be selected for flag  
7 officer rank.

8 Q. Just the Navy. What do you think?

9 A. It's about 25, 26 years.

10 Q. This is a long question.

11 THE COURT: Usually, if you have long questions, do it  
12 in pieces.

13 MR. MORTARA: I will. I will. Your Honor, I have  
14 been learning my lessons from you. I've got something I think  
15 you're going to be excited about it.

16 THE COURT: I'm not sure we'll get excited about it,  
17 but I'm saying in terms of having to go through a complicated  
18 question, Mr. Mortara -- we're chuckling here -- just go in  
19 stages, and he'll answer the questions.

20 MR. MORTARA: I will. I'm confident you're going to  
21 be excited about it.

22 THE COURT: All right. Okay.

23 BY MR. MORTARA:

24 Q. It is the Department of Defense's view that one of the  
25 reasons the Naval Academy needs to use race in admissions is to

1 admit some number of additional minority midshipmen in 2025 so  
2 that they hopefully do not separate but instead graduate in  
3 2029 so that they maybe stay in beyond their initial commitment  
4 and that they then stay in for another 10 to 15 additional  
5 years so that, if they are good enough on merit, they might get  
6 promoted to flag officer in the United States Navy, correct?

7 A. You'll have to repeat the question.

8 Q. I will not.

9 (Laughter.)

10 THE COURT: Ms. Thomas, can you repeat the question.

11 MR. MORTARA: It's okay, Your Honor. Look at the  
12 screen.

13 THE COURT: Oh, look. Okay. That's fine. You can  
14 look at the screen and answer the question.

15 BY MR. MORTARA:

16 Q. My question is now visualized on the screen, sir. You can  
17 read it for as long as you like. And the question is right  
18 there. Let me make sure you can see it all.

19 A. (Witness reading.)

20 So my response here in the second bullet point here, "to  
21 admit some number of additional minority midshipmen," I'm -- I  
22 can't speak specifically to a number that the Naval Academy is  
23 trying to bring in on that, a specific number.

24 Q. Okay. How would you revise that bullet so you could  
25 achieve the answer "yes"?

1 MS. YANG: Objection, Your Honor.

2 THE COURT: Overruled.

3 BY MR. MORTARA:

4 Q. What is the Naval Academy using race for with respect to  
5 the composition of the first-year midshipmen? It's to achieve  
6 some additional number of minority midshipmen, right?

7 A. I think the -- there are a number of different  
8 considerations for the limited use of race. One of them is to  
9 ensure that we have a pool of officers, midshipmen, and  
10 candidates so that we have an officer corps at the junior  
11 levels that will be reflective of the force that they lead and  
12 that, once those officers are there, that they will then  
13 continue to promote.

14 It is not to -- so once that admissions decision is made,  
15 then all promotion and advancement decisions are based on  
16 merit. So there's the aspect of ensuring that there is a level  
17 of diversity in the -- in the officer corps from the standpoint  
18 of getting to a set of junior officers who are representative  
19 of the people that they'll lead.

20 The second objective is to ensure that there is a level of  
21 diversity within the Naval Academy training environment so  
22 that, as officers develop, individuals will be exposed to  
23 people from different backgrounds with different experiences,  
24 with different lived experiences so that we can develop an  
25 officer corps that is innovative and address the challenges

1 that they'll face.

2 **Q.** So with your problem with the "some number" language --  
3 I've now deleted it -- it's one of the reasons the Naval  
4 Academy needs to use race in admissions is to admit additional  
5 minority midshipmen to accomplish the objectives you just  
6 talked about, right?

7 **A.** I think the trouble that I have with the statement is  
8 still -- is with the "some number of additional." I think it's  
9 really around ensuring that we have a representation that is  
10 representative of the enlisted force.

11 And so the question, then, "additional," seems that there  
12 may be some numeric objective. And I'm not --

13 **Q.** Right. But --

14 **THE COURT:** Let me clarify this to move on.

15 What you're saying is that the question suggests there's a  
16 quota?

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** All right. Let's assume, in fairness to  
19 Mr. Mortara, that he's not asking about a quota; he's just  
20 asking if the consideration of race is a nondeterminative  
21 factor. One of the reasons for that is to achieve the  
22 objective of greater diversity in the flag rank corps  
23 ultimately.

24 **THE WITNESS:** Your Honor, that is --

25 **THE COURT:** Among flag rank officers, ultimately, to



1 have greater diversity there and to consider race is more of a  
2 nondeterminative factor, not a quota, not a fixed number but  
3 some effort to retain -- to have those people then be retained  
4 and climb the ranks to then get to the level of O7 and be flag  
5 rank, correct?

6 THE WITNESS: Your Honor, that's correct.

7 THE COURT: Okay.

8 MR. MORTARA: Thank you, Your Honor. I appreciate it.

9 BY MR. MORTARA:

10 Q. Now I want to go back to subs -- by the way, is "subs" an  
11 okay term to use?

12 A. That's fine.

13 Q. Subs, SEALs, and pilots.

14 This is from Task Force One Navy at page 47. You earlier  
15 told me that aviation, subs, and special warfare, or SEALs,  
16 were pretty nondiverse.

17 And this information is now on the screen for the Court's  
18 benefit as well, Plaintiff's Exhibit 600 at page 47.

19 Let's stop here and compare this to the 1980s. You were  
20 on a submarine in the 1980s. You've testified to that on  
21 direct, correct?

22 A. That's correct.

23 Q. And at one point in your wardroom you were the only racial  
24 minority, correct?

25 A. That is correct.

1 Q. And what's a wardroom?

2 A. On the submarine that I was on, there were about 12  
3 officers that made up the wardroom.

4 Q. Sorry. You misheard me.

5 What is a wardroom?

6 A. What is a wardroom? There's a physical location that's  
7 called the wardroom. That's where you go eat. You might have  
8 meetings. And "wardroom" is also a vernacular for the officers  
9 who serve on a ship.

10 Q. Ah. And you said you served on the USS Groton, correct?

11 A. That is correct.

12 Q. And according to Wikipedia, that is a Los Angeles class  
13 submarine; is that correct?

14 A. That's also correct.

15 Q. You never know with Wikipedia. And Wikipedia also said  
16 143 crew and reported 16 officers. But you -- it was 12 for  
17 you?

18 A. 12 when I was serving.

19 Q. And it's your testimony that the Groton would have had  
20 greater readiness if there had been an additional minority  
21 officer?

22 A. My testimony is that when I served, I was one of 12  
23 officers, and that in -- and in my declaration what I talked  
24 about is that there was a limited amount of diversity in the  
25 cohort that I trained with.

1 Q. Do you think it would have had better readiness if there  
2 had been an additional minority officer?

3 A. I think that it certainly would have contributed to a more  
4 diverse perspective.

5 Q. So fast-forwarding to 2020, when Task Force One Navy is  
6 doing its work, you can see that the population of African  
7 American officers in the submarine community is 2 percent.

8 Do you see that?

9 A. I do.

10 Q. So the great likelihood is that most subs in the Los  
11 Angeles class -- those are fast-attack subs, correct?

12 A. That's correct.

13 Q. -- will have zero Black officers, correct?

14 A. A very small percentage.

15 Q. So -- but the likelihood is -- there's only 12 officers;  
16 there's 2 percent Black officers in subs -- a fast-attack sub  
17 like the Los Angeles class, it's more likely than not there  
18 will be zero Black officers, right?

19 A. More likely than not.

20 Q. Why can't the Navy just assign more Black O1s to nuke and  
21 submarine school to achieve -- to fix this number you see on  
22 the screen?

23 A. The reason is because the Navy doesn't take into  
24 consideration race or ethnicity for assignment.

25 Q. And the reason for that is it is DoD policy that Secretary

1 Austin could change, correct?

2 A. That is correct.

3 Q. You could also use existing minority officers in the  
4 submarine service and reassign them to the submarines that  
5 needed more diversity? You could do that too, couldn't you?

6 A. The -- there is a requirement for officers who are  
7 assigned to submarines, with the exception of the supply corps  
8 officer, to go through nuclear power training. So there are  
9 other considerations for assignment in the submarine force, and  
10 that's the ability to qualify and complete nuclear power  
11 training along with the submarine training.

12 Q. Right. I was thinking of you have some number of Black  
13 officers who have completed nuclear power training, right?

14 A. That is correct.

15 Q. So you have a fast-attack sub. They have no Black  
16 officers. You could say, "Wow. This is a readiness problem.  
17 Let's take a Black officer and assign him to the Groton because  
18 he's Black."

19 You could do that, couldn't you?

20 A. I think the characterization that it's a readiness problem  
21 is maybe not the right characterization.

22 Q. Okay.

23 A. It's just that there's the potential for improvement of  
24 readiness if there were a greater level of diversity in that  
25 wardroom.

1 Q. And we're always try to improve readiness, right?

2 A. That is correct.

3 Q. So the Navy could say, "The Groton has no minority  
4 officers on it. Get Officer X, who is a racial minority Black,  
5 and put him on the Groton."

6 And they're doing it because he's Black. That's okay,  
7 right?

8 A. That would be me making an assignment based on race.

9 Q. And the only reason you can't do that is because of DoD  
10 policy that Lloyd Austin could change?

11 A. That is -- that could be changed, but it's not -- that is  
12 not the policy of the department.

13 Q. Mr. Vazirani, no fault if you don't know this. Do you  
14 know whether Secretary Austin is a defendant in this case?

15 A. I'm sorry?

16 Q. Do you know whether Secretary Austin is one of the  
17 defendants in this case?

18 A. I'm not certain for sure.

19 Q. I want to make sure that this is clear.

20 The DoD is unwilling to revise its assignment policy to  
21 make sure that our ships get this critical force multiplier of  
22 additional racial diversity. Is that your testimony?

23 A. My testimony is that assignments are made independent of  
24 race or diversity, that assignments are based on the  
25 qualifications of an officer to take up a particular role.

1 Q. Mr. Vazirani, everything we just discussed with respect to  
2 subs, with the exception of the proviso that anyone who goes on  
3 a submarine must go to nuclear and power school -- nuclear  
4 power -- what was it?

5 A. Nuclear power training. So that includes a school as well  
6 as a hands-on training experience.

7 Q. Sometimes called nuke school?

8 A. Nuke school, uh-huh.

9 Q. With the exception of that proviso, everything we just  
10 talked about is also true of aviation and SEALs. The Navy  
11 can't use race to assign people to particular units because  
12 that would violate DoD policy which Lloyd Austin could change,  
13 right?

14 A. Each of those specialties has a pipeline for training and  
15 for qualification. And so before an individual is assigned to  
16 a unit -- either an aviation unit, a submarine unit, or a SEAL  
17 unit -- they would have to complete that training, meet the  
18 qualifications of that particular warfare specialty.

19 Q. And they do that at 01, correct?

20 A. They do that at 01 or 02. In the SEAL community some  
21 people might spend an initial tour in a different warfare  
22 community and then access to the SEAL community.

23 Q. If the department would revise its policy and consider  
24 using race to assign people to those three training schools --  
25 nuke school for subs and the other two you just mentioned for

1 aviation and SEALs -- then it could use all three accession  
2 sources in making that decision, isn't that right -- ROTC, OCS,  
3 and the Academy?

4 A. If the department changed its assignment policy? Is that  
5 what you're --

6 Q. Correct.

7 A. I think, again, the department is focused on creating a  
8 meritocracy, where assignment is based on qualifications and  
9 standards.

10 Q. But if it revised the policy, it could deliver more Black  
11 officers to nuke school, more Black officers to SEAL training,  
12 and more Black officers to flight school, correct?

13 A. That is possible.

14 Q. From all three accession sources, correct?

15 A. That is possible, assuming that those individuals met the  
16 qualifications of each of those training pipelines.

17 Q. Well, everyone who attends -- withdrawn.

18 You have not worked in the Naval Academy's admissions  
19 office, correct?

20 A. I have not.

21 Q. You have never worked in any service academy's admissions  
22 office, correct?

23 A. I have not.

24 Q. And you've never served on any admissions board for a  
25 service academy, but you have been a panelist for Jamie

1 Raskin's nominating commission, right?

2 A. That's correct.

3 Q. You've never made recommendation to the dean or  
4 supervisors for superintendent on specific candidates for  
5 admissions, have you?

6 A. I have not.

7 Q. You're not aware of any study to determine the level of  
8 racial representation in the Naval Academy's officer corps that  
9 would successfully promote trust within a unit, correct?

10 A. I'm not aware of a study.

11 Q. You're not aware of any study to determine the level of  
12 racial representation in the Navy's officer corps that would  
13 best promote unit cohesion, correct?

14 A. I'm not aware of a study.

15 Q. You are not aware of any study to determine the level of  
16 racial representation in the Navy's officer corps that would  
17 allow the minority recruits to see themselves as future leaders  
18 in the military, correct?

19 A. I'm not aware of a study.

20 Q. You're not aware of any study that DoD has ever conducted  
21 to determine whether the racial representation of the American  
22 public is an appropriate benchmark for the racial  
23 representation of officers at the U.S. Navy, correct?

24 A. I'm not aware of a specific study. I'm aware of  
25 commissions that have looked at the diversity of the force and



1 the impact that improving diversity would lead to improved  
2 readiness.

3 **Q.** Who is Admiral Cheeseman?

4 **A.** Admiral Rick Cheeseman is the Chief of Naval Personnel.

5 **Q.** Do you remember him testifying in front of Congress last  
6 year and telling them that the Navy has no specific data right  
7 now that talks about any diversity, equity, and inclusion  
8 efforts and how it relates to combat effectiveness?

9 **A.** I don't remember that specific testimony.

10 **Q.** Let me see if I can refresh your memory. Please turn to  
11 P876 in your binder. Says, "Testimony from a Hearing on  
12 Meritocracy" --

13 **THE COURT:** What exhibit is this? Plaintiff's 876?

14 **MR. MORTARA:** I'm just going to try to refresh  
15 recollection.

16 **THE COURT:** He said he had no recollection. His  
17 answer was he had no knowledge of it. So you're going to have  
18 to rephrase your question. You're not refreshing recollection.

19 You can ask him about his knowledge or lack thereof of  
20 this. I don't believe he indicated any great recollection of  
21 his congressional testimony.

22 **MR. MORTARA:** Thank you, Your Honor.

23 **BY MR. MORTARA:**

24 **Q.** It was held on September 20, 2023. I just want to show  
25 you something that Admiral Cheeseman said and see if you

1 remember it.

2 Congressman Waltz said, "So let me ask you in this time I  
3 have remaining, does anyone on the board today have any data  
4 that you could provide the committee that shows that a more  
5 diverse or less diverse -- let's take a submarine in the  
6 Navy -- a crew is more effective, is more ready"?

7 And Admiral Cheeseman responded, "Congressman, thank you  
8 for the question. We do not have any specific data right now  
9 that talks about any diversity equity inclusion efforts and how  
10 it relates to combat effectiveness."

11 Do you remember that testimony?

12 **MS. YANG:** Objection, Your Honor. This is not --

13 **THE COURT:** Sustained, sustained. You don't put  
14 testimony in through a witness. On this theory, you could read  
15 the whole congressional record and say where such-and-such said  
16 such-and-such, Mr. Mortara. This is really a hearsay  
17 inference. You can ask a witness if they have knowledge. If  
18 they have knowledge, fine; if they don't, you can seek to put  
19 it in through another way.

20 The objection is sustained. This is improper examination.  
21 He's indicated no particular knowledge of this testimony.

22 **MR. MORTARA:** I'll move on, Your Honor.

23 **THE COURT:** That's fine. Let's move on. If you want  
24 to seek to move it in some other fashion, we'll certainly  
25 consider it and do it in some other way. But you just don't

1 put a witness on the witness stand, "Are you aware of a speech  
2 somebody gave six months ago? And let me read it to you."  
3 That's not appropriate examination, and the objection is  
4 sustained for that reason.

5 **MR. MORTARA:** Thank you, Your Honor.

6 **BY MR. MORTARA:**

7 **Q.** You're aware there's a lot of studies from the business  
8 context purporting to show that diverse groups made better  
9 decisions, correct?

10 **A.** I'm aware of studies.

11 **Q.** And you talked a lot about diverse officers making better  
12 decisions or solving problems in your direct testimony.

13 Do you remember that?

14 **A.** Yes.

15 **Q.** And the person that you rely on to present to you evidence  
16 about this, or one of the people that you rely on to present  
17 evidence to you about this is your senior advisory  
18 Dr. Jeannette Haynie, correct?

19 **A.** That is correct.

20 **Q.** She's actually here today, correct?

21 **A.** She is.

22 **Q.** Officers in the military exercise extraordinary authority  
23 over subordinate enlisted personnel and junior officers,  
24 including authority to give orders which endanger those  
25 subordinates' lives and to administer criminal sanctions on

1 those subordinates, correct?

2 A. That is correct.

3 Q. You said that in your declaration to this Court, right?

4 A. That is correct.

5 Q. Can you name a business where the leaders do that?

6 A. Business where leaders have extraordinary authority to --

7 Q. Including authority to give orders which endanger their  
8 subordinates' lives and to administer criminal sanctions on  
9 those subordinates?

10 A. I'm not aware of.

11 MR. MORTARA: Thank you. I have no more questions.

12 THE COURT: Thank you. The Court has just a follow-up  
13 question. Counsel can follow up under Rule 614 if you desire.

14 Let me just clarify if I can, Secretary Vazirani.

15 Am I pronouncing your name correctly?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Secretary, the matter of the sub  
18 school, say, in Groton, Connecticut -- in fact, the sub school  
19 is in Groton, Connecticut, is it not?

20 THE WITNESS: That's correct.

21 THE COURT: And the USS Groton is named after that  
22 town?

23 THE WITNESS: That's right.

24 THE COURT: In terms of aviation and SEALs, you could  
25 not -- I understand the Navy does not consider specific

1 assignments in those areas, just to cross-reference people by  
2 race or gender or whatever. But, essentially, as officers come  
3 up through the ranks, they make selection as to where they  
4 would like -- when they graduate from the Academy, some apply  
5 to be line officers, some apply for flight school. They apply;  
6 is that not correct?

7 **THE WITNESS:** That is correct.

8 **THE COURT:** It's their choice. The military, the  
9 Navy, does not say you're going to go to sub school or you're  
10 going to go to SEAL school; they apply, and the Navy says  
11 whether you are or not qualified, correct?

12 **THE WITNESS:** That is also correct.

13 **THE COURT:** So then there's no assignment at that  
14 level, but there is a determination of whether or not those new  
15 ensigns, those graduates of the Academy, are qualified in those  
16 particular areas, correct?

17 **THE WITNESS:** That's correct, Your Honor. Cadets or  
18 midshipmen can express a preference --

19 **THE COURT:** Yes.

20 **THE WITNESS:** -- for a particular warfare community,  
21 and then based on their performance at the service academies  
22 and their ranking, they may be placed into one of those  
23 preferences.

24 **THE COURT:** Right. So then, if they were given that  
25 preference, they have freedom to make that choice; and then if

1 they're given that preference, they then are or are not  
2 accepted in those three particular disciplines, correct?

3 **THE WITNESS:** That's correct.

4 **THE COURT:** For example, each one has its own level.  
5 I mean, I think we made reference earlier last week. I know  
6 Admiral Rickover, I believe, is long passed, is he not?

7 **THE WITNESS:** He has.

8 **THE COURT:** But he used to be the ultimate blocking  
9 board in terms, if an officer wanted to go into the submarine  
10 school, at one point he interviewed everybody, did he not,  
11 individually?

12 **THE WITNESS:** That's correct.

13 **THE COURT:** You literally sat in front of Admiral  
14 Rickover, and either he said up or down, and that's the way it  
15 was if you wanted to be a submariner, correct?

16 **THE WITNESS:** That's correct.

17 **THE COURT:** I'm sure no one else -- has anyone taken  
18 his place to that extent in terms of up or down, one person?

19 **THE WITNESS:** It's still the process today. Each  
20 candidate --

21 **THE COURT:** Who is the person -- who is the admiral  
22 that now makes that decision?

23 **THE WITNESS:** I believe that is Admiral Houston, but  
24 I'm not sure.

25 **THE COURT:** So if someone wants to be a submariner and

1 they graduate from the Academy, they choose to go through  
2 certain levels of schools, and they might even get to Groton,  
3 but they might not make it past the admiral's desk ultimately,  
4 correct?

5 **THE WITNESS:** That is correct.

6 **THE COURT:** But, again, that's not a matter of a  
7 direct assignment in response to Mr. Mortara's questions, but  
8 it's a matter of choice. But in terms of the choice, those  
9 candidates are limited by whether the Navy says yes or no, you  
10 can go to submarine school, you can go to SEAL schools, or you  
11 can go to flight school?

12 **THE WITNESS:** That is correct.

13 **THE COURT:** That might help everyone.

14 Do you want to follow up first on that, Ms. Yang?

15 And then, Mr. Mortara, you're free to cross.

16 Any questions on that?

17 **MS. YANG:** No, Your Honor.

18 **THE COURT:** Mr. Mortara, do you want to follow up with  
19 any questions?

20 **CROSS EXAMINATION**

21 **BY MR. MORTARA:**

22 **Q.** The United States Navy could order people to attend  
23 submarine nuke school, correct?

24 **A.** The United States could order people to attend school.

25 **Q.** It is within the power to tell a midshipman, "You are

1 going to that warfighting community"?

2 A. It's -- it is in the power for the service to direct  
3 someone to that training pipeline. They would still need to  
4 complete that training pipeline before they were assigned to an  
5 operational unit.

6 Q. And the Navy is the one that has the power to decide  
7 whether that pipeline has been -- that training has been  
8 completed, correct?

9 A. That is correct.

10 MR. MORTARA: I have no more questions.

11 THE COURT: That leaves me a question. Let's go back.  
12 I'm not sure we got the gist of it.

13 MR. MORTARA: I'm enjoying this.

14 THE COURT: That's fine. That's fine. I don't  
15 usually ask too many questions from bench, but this is an  
16 important area to go into.

17 The point is this, that someone can be enormously  
18 talented, can be brilliant, be number one in their class --  
19 we've had someone here who was number two in their class at the  
20 Academy -- but they might have very definite claustrophobic  
21 tendencies, correct?

22 THE WITNESS: That is correct.

23 THE COURT: I wouldn't think someone who has  
24 claustrophobic tendencies wants to go on a submarine. Is that  
25 a fair comment?



1           **THE WITNESS:** That's a fair comment, yes.

2           **THE COURT:** So they apply. They might want to go to  
3 flight school, they might want to go to SEAL school, but they  
4 don't want to be on a submarine.

5           **THE WITNESS:** That's possible.

6           **THE COURT:** I'm sure there are studies done of this  
7 with respect to candidates as they come through the line -- be  
8 it ROTC, Naval Academy, or whatever -- in terms of physical and  
9 mental capacities, correct?

10          **THE WITNESS:** There are screenings. There's academic  
11 screening. There is a psychological screening.

12          **THE COURT:** Sure. And the point is is that, as to  
13 these choices, it's still within the realm of the candidate if  
14 he or she chooses that they want to fly or they don't want to  
15 fly or go into a submarine or they don't or be a SEAL or not,  
16 they initially indicate an interest. As to none of these  
17 disciplines does the Navy just say you are going to fly  
18 airplanes and go to Pensacola, correct?

19          **THE WITNESS:** Not correct. No, sir.

20          **THE COURT:** That's never been the tradition in the  
21 Navy?

22          **THE WITNESS:** I'm not aware of it.

23          **THE COURT:** So that's very simple. So to say the Navy  
24 can just assign people to a certain area from Mr. Mortara's  
25 question, with all due respect to Mr. Mortara, is simply not

1 accurate. The Navy cannot just -- I guess, technically, the  
2 President of the United States can order the Secretary of  
3 Defense to order the Chief of Naval Operations to send a  
4 particular person on a ship somewhere and I guess that order  
5 has to be obeyed.

6 But the simple fact of the matter is that's not the way  
7 the Navy has ever operated. You don't just specifically pick  
8 someone and say, "You're going to go to this area." It is  
9 listed in some preference.

10 I know some of the graduates of the Academy wind up going  
11 on the line, essentially line officers on ships, correct?  
12 That's called line officers, right?

13 **THE WITNESS:** That's correct.

14 **THE COURT:** And sometimes those that maybe want to do  
15 subs or SEALs or flight school, for whatever reason they don't  
16 make it and they wind up becoming line officers and it was not  
17 their first choice, but they're given some ability to choose an  
18 area, correct?

19 **THE WITNESS:** That is correct.

20 **THE COURT:** The Navy doesn't specifically say this is  
21 where you're going to go, as suggested by Mr. Mortara's  
22 question.

23 **THE WITNESS:** The Navy does not specifically --

24 **THE COURT:** Ms. Yang, do you want to follow up  
25 anything on that yet?

1 MS. YANG: No, Your Honor.

2 THE COURT: Mr. Mortara, your turn again.

3 MR. MORTARA: Your Honor, I will.

4 CONTINUED CROSS EXAMINATION

5 BY MR. MORTARA:

6 - - -

7 Q. You don't dispute the idea that the Navy could, in part,  
8 rectify the kind of surprising lack of diversity in those three  
9 communities if it used race as a factor, among many, in  
10 deciding who, amongst those who expressed interest in going,  
11 got to go to those --

12 THE COURT: The question is among those who expressed  
13 interest in going to those disciplines?

14 MR. MORTARA: Correct.

15 THE COURT: The question is appropriate, then. That's  
16 fine.

17 MR. MORTARA: I put it in for you, Your Honor.

18 THE COURT: Thank you very much.

19 MR. MORTARA: I'm sorry, Ronda. Would you read please  
20 that back? It was a really good question, and I can't  
21 remember.

22 THE COURT: Ronda, he didn't say my question was a  
23 good question; he said his question was a good question. Might  
24 make it easier.

25 (Laughter.)

1           **THE COURT:** We're chuckling here a little bit.

2           Let's go back. Ms. Thomas is yeoman's work here, that's  
3 for sure.

4           (Record read.)

5           **BY MR. MORTARA:**

6           **Q.** You got my question? I can try again.

7           **A.** If you'd try again, that would be helpful.

8           **Q.** Sure. You've never done my job, right?

9           **A.** I'm sorry?

10          **Q.** You've never done my job?

11          **A.** I've never done your job.

12          **Q.** I've never done any of your jobs. So this is not actually  
13 as hard as I'm making it seem.

14          You don't dispute that the Navy could, in part, rectify  
15 the frankly surprising lack of diversity in those three  
16 communities if it used race as one factor among many in  
17 deciding who, among those who expressed interest, could go to  
18 those training communities, do you?

19          **A.** I don't dispute that fact. What I would say is that  
20 because the -- those officers have choice, one of the things we  
21 want to do is make sure that people are serving in a capacity  
22 where they would feel motivated to serve and to execute the  
23 mission.

24          And so each of those different warfare communities has  
25 different requirements, different skill sets, and different

1 capabilities. So we want to ensure that people who meet those  
2 requirements are motivated to serve in that environment.

3 So ordering someone to do that, if they may have expressed  
4 that interest, that may be helpful, but -- but we want that to  
5 be an area where an officer feels that they had a choice.

6 **MR. MORTARA:** Your Honor, I'm just going to follow up  
7 one more time.

8 **THE COURT:** Sure. Go ahead.

9 **MR. MORTARA:** I think we're clear --

10 **THE COURT:** Let me help you. I think I know what  
11 you're getting at, Mr. Mortara.

12 The question is this, Mr. Mortara, is that the Navy,  
13 technically, could, in an effort to increase diversity in the  
14 sub, SEALs, and aviation areas, if it chose, could seek to  
15 recruit certain officers and encourage them to apply in certain  
16 fields and could take race into consideration in doing that if  
17 the Navy made that additional step as they come through the  
18 ranks to encourage them to apply in certain fields. The Navy  
19 could take that step if it decided to do so?

20 **THE WITNESS:** Your Honor, the Navy could take that  
21 step to --

22 **THE COURT:** Not specifically saying this is what  
23 you're going to do, but encourage people to apply in those  
24 areas as an effort towards greater racial diversity in those  
25 three areas if it chose to do so.

1 THE WITNESS: The Navy could take that step.

2 THE COURT: Does that help you, Mr. Mortara?

3 MR. MORTARA: One more?

4 THE COURT: Sure. Go ahead.

5 BY MR. MORTARA:

6 Q. And what the Navy couldn't do under current DoD policy is  
7 then use race as a factor in deciding which of the interested  
8 parties got to go to which community?

9 A. That is correct.

10 THE COURT: Just so we're clear, so the record is  
11 clear on this, so they could consider race as a  
12 nondeterminative factor. According to the testimony, they now  
13 do in all areas. It would not be a deciding factor; it would  
14 be among many considerations, correct?

15 THE WITNESS: That's correct, Your Honor.

16 MR. MORTARA: Oh, now we're confused.

17 BY MR. MORTARA:

18 Q. The Navy, because of DoD policy, in no way ever takes into  
19 account anyone's race in any way in assigning them to a  
20 community, correct?

21 A. The Navy, as a general matter, does not take race into  
22 account for assignment.

23 Q. At all, right?

24 A. In the -- in the definition of assignment, a person  
25 getting orders to a particular warfare community or to a

1 particular job, that race is not taken in consideration.

2 **MR. MORTARA:** And, Your Honor, my point, just speaking  
3 to you now --

4 **THE COURT:** I think we have enough testimony of this  
5 witness.

6 **MR. MORTARA:** Okay.

7 **THE COURT:** You certainly can address this in your  
8 closing argument, and as can the Academy and the defendants on  
9 this. I think we've developed on this record the best I can.  
10 I was trying to help the record here on this. And I think the  
11 record is clear in terms of what the point you're trying to  
12 make and what the Navy can or can't do or has done. That's the  
13 point.

14 **MR. MORTARA:** Thank you, Your Honor.

15 In case there's no redirect, thank you for your service to  
16 this country.

17 **THE COURT:** Anything further, Ms. Yang, on redirect?

18 **MS. YANG:** No, Your Honor.

19 **THE COURT:** Secretary Vazirani, again, thank you for  
20 your military service to the country. You're excused. You  
21 should not discuss your testimony with anyone in the event  
22 you're called back to the witness stand before this trial  
23 concludes later this week. Thank you very much.

24 **THE WITNESS:** Thank you very much.

25 **THE COURT:** With that, I think this is an appropriate

1 place to take our late morning break, and we'll get started  
2 again in 10 or 15 minutes.

3 The next witness, as I understand it, is going to be  
4 Jeannette Haynie. Is that correct?

5 MS. YANG: That's correct.

6 THE COURT: We'll take about a 10- or 15-minute  
7 recess.

8 THE CLERK: All rise. This Honorable Court is now in  
9 recess.

10 (A recess was taken from 11:41 a.m. to 11:59 am.)

11 THE COURT: As I understand, the next witness is  
12 Dr. Haynie. We'll please swear the witness.

13 THE CLERK: Please raise your right hand.

14 (Witness sworn.)

15 THE CLERK: If you don't mind adjusting the microphone  
16 and speaking directly into it, keep your voice up.

17 Please state and spell your first and last name for the  
18 record.

19 THE WITNESS: Yes. It's Jeannette Haynie.  
20 J-E-A-N-N-E-T-T-E, H-A-Y-N-I-E.

21 THE COURT: You may proceed, Mr. Robinson.

22 **DIRECT EXAMINATION**

23 **BY MR. ROBINSON:**

24 **Q.** Good morning, Dr. Haynie. Could you please state your  
25 current position and title.



1 A. Yes. I am currently a principal research scientist at CNA  
2 Corporation.

3 Q. What is CNA Corporation?

4 A. CNA is an independent nonpartisan think tank, a partially  
5 federally funded think tank that does research and analysis on  
6 behalf of the Department of Defense and other organizations.  
7 It also does independent research for domestic agencies around  
8 the country.

9 Q. Are you testifying today on behalf of CNA in your capacity  
10 as a research scientist?

11 A. No, I am not.

12 Q. In what capacity are you testifying?

13 A. I am here today in the capacity of testifying as an expert  
14 witness on behalf of the federal government.

15 Q. Where did you work before CNA?

16 A. Department of Defense.

17 Q. What position did you hold at the Department of Defense?

18 A. I was what's called a highly qualified expert for DoD. I  
19 served as the senior advisor to the Office of the  
20 Undersecretary of Defense for Personnel and Readiness.

21 Q. Who was the last undersecretary for personnel and  
22 readiness at the time you were at the DoD?

23 A. The last one is the gentleman who just testified,  
24 Mr. Vazirani.

25 Q. How long did you hold this position at the Department of

1 Defense?

2 A. I was an HQE -- it's the acronym for highly qualified  
3 expert -- from October of 2021 and through late July of this  
4 year, 2024.

5 Q. At the time you provided your expert opinions in this  
6 case, were you a Department of Defense employee?

7 A. Yes, I was.

8 Q. You left the Department of Defense after you disclosed  
9 your opinions in this case?

10 A. That is correct.

11 Q. Were you then retained by the government after you left  
12 the employment of the Department of Defense?

13 A. Yes, I was.

14 Q. All right. I'm going to come back to your work with the  
15 Department of Defense in a moment, but first I'd like to talk a  
16 bit about your educational background and professional  
17 experience.

18 Where did you go to college?

19 A. I graduated from the United States Naval Academy.

20 Q. When did you graduate?

21 A. 1998.

22 Q. Did you start your undergraduate studies at the Naval  
23 Academy?

24 A. No, I did not.

25 Q. Could you explain that?

1 A. I did. I actually -- well, sort of started. I went on  
2 induction day for one day with the class of 1997 and was very  
3 immature and didn't have a lot of family support in staying; so  
4 I quit.

5 Immediately realized it was a mistake, went to Penn State  
6 for a year and did well there and earned myself a spot back in.  
7 But it's kind of an interesting story of how I got back in.

8 Q. Could you tell that story to the Court?

9 A. Yes. So I reapplied, and the chair of the admissions  
10 board called me in my dorm room at Penn State. He was a Navy  
11 captain at the time who had been a jet pilot during Vietnam,  
12 flying off the carriers in the Gulf. And he called me, and the  
13 first -- I won't say all the words because they're probably not  
14 printable, but he said, "What do you think you're doing? You  
15 had your chance, and you blew it."

16 I said, "You are correct."

17 I don't remember the rest of the conversation in detail  
18 because I was 18 at the time, but whatever I said convinced him  
19 that I deserved another chance. He kept in touch with me  
20 throughout the year. And a month prior to induction day for  
21 the class of 1998, he called me in my dorm room, and he said,  
22 "If you want in, you're in. Don't blank it up," and, you know,  
23 said a different word in that blank.

24 And then he followed my career for the first year, and he  
25 saw something in me that he felt was important to have at the

1 Academy.

2 Q. Do you have any reason to believe that your race or  
3 ethnicity or gender played a role in your admission to the  
4 Naval Academy?

5 A. I did not at the time. But in the subsequent years, I  
6 did. There's actually a book written about this called "Sea  
7 Change at Annapolis." And it's about the push to bring in more  
8 strong, qualified women to the Naval Academy.

9 And this man, Captain Sandy Coward -- who unfortunately  
10 passed away a few years ago -- was one of the leading advocates  
11 for women -- seeking out strong, capable women -- and bringing  
12 us in into the Academy at the time.

13 Q. You said you graduated from the Naval Academy in 1998?

14 A. Yes.

15 Q. What did you do after you graduated?

16 A. I was commissioned on graduation day as a second  
17 lieutenant in the United States Marine Corps.

18 Q. And what kind of training did you go into after you  
19 commissioned as a second lieutenant in the Marine Corps?

20 A. I first went to Quantico, Virginia, where I went through  
21 the six-month basic officer course, which is a course for all  
22 new Marine Corps second lieutenants. We learn to lead Marines  
23 in the kind of environments that Marines will serve in.

24 Q. Did you do any other type of training?

25 A. I did. I went from there to flight school in Pensacola,

1 Florida, and progressed towards my wings.

2 Q. And can I ask you, Dr. Haynie, how you did in flight  
3 school?

4 A. Yes. I was first in my class at flight school. And I say  
5 that because that was the only way I was able to earn a spot to  
6 fly Cobras, which are attack helicopters. So I was the third  
7 woman to fly Cobras in the Marine Corps.

8 Q. In history?

9 A. Yes. They had only recently opened up the field to women.

10 Q. You said that Cobras are attack helicopters. What do  
11 Cobras do?

12 A. Yes. They are attack helicopters; so their mission is  
13 to -- they have a range of missions, close and direct air  
14 support, armed escort, armed reconnaissance, and they control  
15 fires from both the ground and from other aircraft.

16 Q. Were you ever deployed?

17 A. I was, yes.

18 Q. When were you deployed?

19 A. While on active duty, I conducted three deployments. Two  
20 were on Navy ships; so via Marine expeditionary units, mostly  
21 in areas of Asia. Those were in 2002 and then 2003 to '04.  
22 And then in 2003 I was part of the initial march-up in Iraq as  
23 part of Operation Iraqi Freedom.

24 Q. Did you have combat experience during your deployments?

25 A. Yes, I did.

1 Q. When was that?

2 A. That was in Iraq.

3 Q. How long were you on active duty, Dr. Haynie?

4 A. I was on active duty for about nine and a half -- just  
5 under 10 years at first. And then I switched to the  
6 reserves -- transitioned to the reserves, where I served  
7 another 10 years, and then went back on active duty for one  
8 last set of orders before retiring.

9 Q. I'll ask about that in a moment. But first I'd like to  
10 ask you, when you left active duty the first time, why did you  
11 leave and what did you do next?

12 A. I left because I am also a military spouse. So I have  
13 been married for 25 years to an infantry Marine officer who was  
14 a classmate of mine at the Naval Academy. And we were -- you  
15 know, if you remember anything about the early years of the  
16 wars in Iraq and Afghanistan, military units were deploying  
17 like this. We had a baby in 2005. And between that and our  
18 careers, our family would not have sustained both of us staying  
19 in.

20 So the timing worked out for me to -- for me to be the one  
21 to transition to the reserves. So I stayed in the reserves. I  
22 switched to reserve flying squadron, where I served as a flight  
23 instructor. I simultaneously -- I don't sit still very well;  
24 so I went back to school.

25 Q. What drove you to go back to school?

1 A. I had had a number of experiences, both as a woman in the  
2 Marine Corps in a warfighting organization and in a warfighting  
3 organization that had gone to war, that I wanted to understand  
4 better.

5 Q. Where did you go to school?

6 A. I started for my master's program at the University of New  
7 Orleans in New Orleans, Louisiana, which is where we were  
8 stationed at the time and is also my hometown.

9 Q. What was your master's in?

10 A. Political science with a focus in international relations.

11 Q. What did you do after that, after you earned your master's  
12 degree?

13 A. After that, I continued to serve as a reserve instructor,  
14 but my husband received orders up to the Pentagon in  
15 Washington, DC. So at that point, we had three kids. We  
16 packed up the family, moved up to DC. And I switched to a  
17 reserve job in the joint staff, where I served in J33, homeland  
18 defense theater security, for the next four years. I also went  
19 back to school again.

20 Q. And where did you go to school this time?

21 A. The George Washington University in DC.

22 Q. What program was that? What degree was it?

23 A. That was the international relations program at GW with a  
24 focus on quantitative methods.

25 Q. What degree did you earn?

1 A. I earned a doctorate.

2 Q. In which year?

3 A. That was December of 2017. I earned a doctorate. And the  
4 focus of my work was around people and different forms of  
5 security, violence, and war.

6 Q. Were you continuing to work in the reserves while you were  
7 pursuing your graduate degree?

8 A. I was. I was also solo parenting for big chunks of that  
9 because my husband took orders out of the area again. But I  
10 served in the joint staff for four years, took a six-month  
11 billet in manpower and reserve affairs for the Navy before I  
12 switched to the -- serve in the Marine Corps Commandant's  
13 Strategic Initiatives Group -- General Miller was the  
14 commandant at the time -- where I served as strategic analyst  
15 for the next couple of years.

16 Q. So I wanted to ask you some questions about that  
17 experience.

18 You mentioned the Strategic Initiatives Group. What is  
19 that?

20 A. At the time -- I think it's changed form and structure  
21 several times since then, but it was General Miller's think  
22 tank. So the analysts in that group conduct analyses of  
23 different kinds into different issue areas.

24 Q. What did you work on during this time?

25 A. I worked a range of issues, some of which were directed by



1 the commandant or his team. I also worked on critical and  
2 creative thinking and learning for warfighting effectiveness.  
3 I helped draft the outline for that new doctrine on learning  
4 for warfighting effectiveness.

5 I focused on talent management and also conducted  
6 research -- or conducted research in support of a task force  
7 that was formed after Marines United, which was kind of an  
8 internal Marine Corps scandal about how women were treated in  
9 the Marine Corps.

10 I also did some independent research directly for the  
11 assistant commandant of the Marine Corps on recruitment and  
12 retention of underrepresented groups, including women. Excuse  
13 me. And then I stayed on.

14 I took -- I took an extra set of orders at that point  
15 instead of retiring to directly work to stand up the Office of  
16 Talent Management in the Marine Corps, specifically providing  
17 research and strategy support.

18 Q. During this time frame from 2016 to 2020, let's say, did  
19 you have any other professional engagements?

20 A. Yes. I mentioned I was a military spouse; so I worked  
21 across a range of different areas. My career came second to  
22 the orders my husband had; so I had to kind of fill in in  
23 different places when I needed to.

24 So I served as a graduate teaching fellow and adjunct  
25 professor at the George Washington University and at Tulane

1 University. I taught classes on quantitative assessment of  
2 disaster resilience, gender conflict and security, and intro to  
3 international relations.

4 I was presidential leadership scholar of the class of  
5 2019; so selected for that program which brought together 60  
6 leaders from across the United States from diverse groups and  
7 backgrounds to study leadership at a high level and to work on  
8 specific leadership projects and programs.

9 I also served as a -- I founded and directed a nonprofit  
10 organization that focused on understanding the links between  
11 diversity, including gender diversity in particular, but all  
12 kinds of diversity and national security.

13 And I served as a senior fellow at a couple of different  
14 think tanks in the DC area, Center for New American Security  
15 and New America.

16 Q. At some point did you take a position at a think tank  
17 known as RAND?

18 A. Yes, I did. When I retired out of the Marine Corps in  
19 2019 -- or I'm sorry. I left active duty in 2019, retired  
20 formally as a reservist in 2020. I started at RAND in 2020.

21 Q. What is RAND?

22 A. RAND is -- like CNA, it is also a form of a think tank.  
23 It is a federally funded research and development center, part  
24 of it is, which focuses on national security, defense, and  
25 military research, at least the sections I was engaged on.

1 Q. Does it ever conduct research for the federal government?

2 A. Yes, very significantly.

3 Q. And what did you do at RAND?

4 A. I was a political scientist at RAND; so I performed in  
5 teams and led some teams to conduct research into particular  
6 problem areas such as aviation modernization in the Marine  
7 Corps, different operational scenarios the military might face  
8 in different parts of the world in the coming years, war-gaming  
9 use in the military, the Army's people strategy and the  
10 diversity and inclusion annex to that were some of the studies.

11 Q. How long were you at RAND?

12 A. 13 months.

13 Q. What did you do after working as a political scientist at  
14 RAND?

15 A. I was at RAND when I was asked by name to come back to DoD  
16 in the highly qualified expert position that I mentioned  
17 earlier.

18 Q. Now, I'd like to return to that. So what were your job  
19 responsibilities in this position at the Department of Defense?

20 A. My responsibility, I was charged with the mission of  
21 ensuring that DoD people and culture efforts were directly  
22 linked and developed in such a way that they directly supported  
23 the mission of the United States Department of Defense.

24 Q. Did you work on any task forces at the time?

25 A. Yes. I led a task force that was charged with that

1 mission. It was a cross DoD task force of senior leaders from  
2 the services, all of the services, and many of the components.

3 Q. What was that task force called?

4 A. It was called the DoD 2040 Task Force.

5 Q. And what did the DoD 2040 Task Force entail?

6 A. So the overall mission was to ensure that we were bringing  
7 in research and data from -- whether it was the outside other  
8 parts of the government, conflict and security literature,  
9 those fields, to understand the value and applications of  
10 people and culture, particularly diversity/inclusion to the  
11 department's mission and how it accomplishes its mission.

12 We worked -- there were a number of different areas. I  
13 can cover those briefly if you think it would be helpful.

14 Q. Sure. Please.

15 A. First, we were responsible for understanding the mission  
16 of the Department of Defense and research within DoD's  
17 strategies, policies, guidance, things like that. We were also  
18 required to understand the conflict and security literature and  
19 bring in those elements that were -- that reflect the DoD's  
20 mission set or could help us understand the role of diversity  
21 and inclusion in supporting those mission sets.

22 We needed to communicate that research pretty regularly to  
23 policyholders to ensure that policyholders had access to good  
24 research. We also conducted initiatives such as war-gaming,  
25 talent management, innovation challenges across DoD. And we

1 were responsible for responding to a range of -- I believe it  
2 was three executive orders from the federal government which  
3 took time as well.

4 Q. In this role at the Department of Defense, did you focus  
5 on particular services or components of the Department of  
6 Defense?

7 A. We worked across the services and primarily three of the  
8 components in different ways.

9 Q. And can you say again when you were there beginning to end  
10 in this position?

11 A. Yes. I started in October of 2021, and I left in July of  
12 2024.

13 Q. Why did you leave in July of 2024?

14 A. Quite frankly, I got a good offer to go and do research  
15 again, and I've missed research. So I took it.

16 Q. Have you authored publications in the area of diversity  
17 and national security?

18 A. I have, yes.

19 Q. Approximately how many?

20 A. I wouldn't know off the top of my head. Some of them are  
21 listed in my curriculum vitae in the publications section. But  
22 because I've spent so much of my time either in the Department  
23 of Defense or in uniform -- you know, on the uniform side -- a  
24 significant part of my work has been internal papers, whether  
25 white papers, think papers, papers meant to inform DoD

1 policymakers, and some papers on behalf of the Department of  
2 Defense.

3 Q. Have you ever spoken publicly about issues of diversity  
4 and inclusion and national security?

5 A. Yes, I have.

6 As I mentioned earlier, I served as an adjunct professor;  
7 so I've talked about the issues in my classes at different  
8 times when relevant and appropriate. I've served as a guest  
9 lecturer at different institutions as well and have done some  
10 public speaking in the areas of, like, leadership and national  
11 security and diversity.

12 Q. Dr. Haynie, I'd now like to talk with you about your work  
13 in this case.

14 Did the Department of Justice ask you to provide your  
15 expert opinions on certain issues in this case?

16 A. Yes.

17 Q. What issues generally were you asked to opine on?

18 A. The issues of the value and applications of diversity and  
19 inclusion for national security.

20 Q. What methodology did you use to prepare your testimony  
21 today?

22 A. I started with a literature review to understand and make  
23 sure I was tracking the literature relevant to conflict  
24 insecurity out in the academic world as well as the nonacademic  
25 literature. That would be government reports, strategies,

1 guidance, things like that. Also went back through my own  
2 years of experience. I've been -- for better or worse, I've  
3 been in this institution now for 30 years; so have had a range  
4 of experiences relevant to it.

5 **Q.** Is that methodology that you described used by other  
6 experts in your field?

7 **A.** Yes.

8 **Q.** Did the application of this methodology allow you to reach  
9 certain conclusions in this case?

10 **A.** It did.

11 **MR. ROBINSON:** At this time, Your Honor, I'd move to  
12 have Dr. Haynie qualified as an expert witness on the relevance  
13 of diversity and inclusion to the military and its mission.

14 **THE COURT:** Any voir dire, Mr. Mortara?

15 **MR. MORTARA:** No, Your Honor. No objection.

16 **THE COURT:** All right. It will be so accepted as an  
17 expert in the field of diversity and implications as to  
18 national security, and Dr. Haynie may testify and give her  
19 opinions.

20 **BY MR. ROBINSON:**

21 **Q.** Dr. Haynie, did you prepare an expert disclosure in this  
22 case?

23 **A.** I did.

24 **MR. ROBINSON:** Could we put on the screen Defense  
25 Exhibit 194, please.

1           **THE COURT:** As consistent with prior rulings of the  
2 Court, this will be admitted into evidence as her expert  
3 report, and I'll be careful if there are any other hearsay  
4 implications, as I've been with the other matters.

5           **MR. ROBINSON:** Thank you, Your Honor.

6 **BY MR. ROBINSON:**

7 **Q.** Did this disclosure contain the opinions that you intend  
8 to offer today, Dr. Haynie?

9 **A.** Yes.

10 **Q.** Okay.

11 And I believe it's been admitted; so we can take that  
12 down.

13 I think we also have a demonstrative with a summary of the  
14 opinions that you're offering.

15 Could we put up Defense Demonstrative 4.

16 Dr. Haynie, is this a summary of your opinions?

17 **A.** Yes, it is.

18 **Q.** What is your first opinion that you're offering today?

19 **A.** My first opinion is that diversity and inclusion support  
20 military effectiveness and mission accomplishment.

21 **Q.** Thank you.

22 We can take this down for now.

23 Dr. Haynie, in your opinion, how do diversity and  
24 inclusion support military effectiveness and mission  
25 accomplishment?



1 A. So forgive me for starting off kind of broad, but just to  
2 talk kind of big to small, war is at heart a human endeavor.  
3 So when we talk about war, we talk about the violent end of  
4 security in different forms. We're talking about people. And  
5 we're talking about how people shape war. People decide.  
6 People lead in war. People operate the platforms and vehicles  
7 that we use in war. So it is inherent -- war is inherently a  
8 human endeavor. We have to understand the people side.

9 There's an additional piece to war that I think is really  
10 important here, and that is war impacts different people around  
11 the world in different ways based on where they come from, how  
12 they present, what kind of groups they are part of, what kind  
13 of access to power they have.

14 And as a result, to fully understand war and its more  
15 violent insecurity and its more violent applications, we need  
16 to understand that people are impacted differently in war, and  
17 we need to take those opinions and use them to make our  
18 decisions in conflict and security decision-making.

19 Q. Is there research that demonstrates that diversity and  
20 inclusion support military effectiveness and mission  
21 accomplishment?

22 A. Yes, there is. There's a range of studies.

23 I think what I'd like to do first is focus on the conflict  
24 and security literature, and then we'll get more towards the  
25 diversity and inclusion literature a little bit.

1 But from the conflict and security literature, we learned,  
2 as I mentioned a few moments ago, that war- and  
3 security-related violence impact different groups in different  
4 ways around the world and that me, as a woman, looking the way  
5 I do, might experience conflict in a way that someone else who  
6 doesn't come from the same background, look the same way, or  
7 live in the same area might experience it. So first we need to  
8 understand that basic tenant about war and security.

9 Then we need to understand -- to fully understand and  
10 operate optimally in that environment from a military  
11 perspective, we need to make sure we are seeking that kind of  
12 information on who's being impacted, what the different drivers  
13 of tension and violence are around the world and how we -- and  
14 I keep say "me" -- or "we." Forgive me. I spent a lot of time  
15 in DoD, and I'm still trying to pull it out. So how we see the  
16 operational environment, we have to take in all these different  
17 kind of inputs.

18 The third piece of that is then we have to seek people who  
19 may come from all those different backgrounds or who may be  
20 familiar with the different challenges that people around the  
21 world face to use in our conflict decision-making.

22 Another piece of that is we also want to make sure we're  
23 not excluding folks when we bring them in. We want to make  
24 sure we have inclusive policies and pathways so that people  
25 from different backgrounds with different sets of experiences

1 can have pathways to leadership to shape decision-making.

2 And I think all of that is very important.

3 Q. Is this reflected anywhere in military doctrine?

4 A. Yes, it is.

5 Q. Could you explain that?

6 A. So I grew up Marine Corps. So I'm familiar with MCDP 1,  
7 which stands for Marine Corps Doctrinal Publication 1,  
8 "Warfighting."

9 Q. Okay. Let's take a look at that. This is going to be  
10 Defense Exhibit 174.

11 Is this the document that you were just referencing?

12 A. It is.

13 Q. And could you just explain generally what this document is  
14 and what purpose it serves.

15 A. This is the core Marine Corps warfighting doctrine,  
16 obviously, from the name of it. It talks about warfighting.  
17 It's basically the culture of the Marine Corps, how we think  
18 about an adversary and the challenges we face in war.

19 Q. Could we take a look at the table of contents, which I  
20 believe is on page 8.

21 Thank you.

22 Looking at this table of contents, can you tell where it  
23 reflects or discusses what you were just talking about, which  
24 is that war is a human endeavor.

25 A. It's woven through the entire doctrine in different ways,

1 but I would say particularly in Chapter 1 you can see where it  
2 says "friction, uncertainty." The human dimension in  
3 particular pulls out elements of this as well.

4 Q. So let's take a look at that section on the human  
5 dimension. I believe this is page 22 of the document. And  
6 could you just read there what it says about war being a human  
7 endeavor.

8 A. "Because war is a clash between opposing human wills, the  
9 human dimension is central in war. It is the human dimension  
10 which infuses war with its intangible moral factors. War is  
11 shaped by human nature and is subject to the complexities,  
12 inconsistencies, and peculiarities which characterize human  
13 behavior. Since war is an act of violence based on  
14 irreconcilable disagreement, it will invariably inflame and be  
15 shaped by human emotions."

16 Q. Thank you.

17 And if we can turn to the next page of this document, it  
18 goes on. And could you read into the record there what it says  
19 about this issue.

20 A. It says, "No degree of technological development or  
21 scientific calculation will diminish the human dimension in  
22 war. Any doctrine which attempts to reduce warfare to ratios  
23 of forces, weapons, and equipment neglects the impact of the  
24 human will on the conduct of war and is therefore inherently  
25 flawed."

1 Q. Thank you.

2 We can take that down.

3 Dr. Haynie, what is the mission of the Department of  
4 Defense?

5 A. The mission of the Department of Defense is to provide the  
6 military forces to deter war and ensure the nation's security.

7 Q. How do diversity and inclusion support the Department of  
8 Defense's mission?

9 A. There are a couple ways to kind of present this. When I  
10 teach, I talk about it in three different ways.

11 The first is to really pay attention to that word "provide  
12 the military forces." Those are people we're talking about.  
13 To provide the people in organizations that are led  
14 appropriately to accomplish the mission.

15 And so I tend to think about it in three buckets. We  
16 have -- there's a numbers perspective. Mr. Vazirani spoke to  
17 that as well. We need access to people of America, to  
18 different skill sets and backgrounds, to fill our seats, to fly  
19 our planes, to drive the tanks, et cetera, except in the Marine  
20 Corps who just divested. Anyway. So we need people to fill  
21 those seats.

22 We also need people because we want to reflect the nation.  
23 I know we'll talk about this a little bit more, I think, with  
24 one of my arguments.

25 The second piece is the broader diversity and inclusion

1 literature, that research, which talks about diversity and  
2 inclusion in a general sense, in teams, in a range of different  
3 environments. That literature -- that research talks about how  
4 diverse teams can bring increased innovation and creativity.  
5 Heterogeneity in teams can infuse energy and engagement in ways  
6 that more homogeneous teams may not have.

7 But the fourth piece -- or third piece -- and I think this  
8 is a really important one for consideration, given the  
9 department's mission, is the nature of war and what it does to  
10 people, what people do through it, and how they act.

11 And as I mentioned a moment ago, that piece about  
12 different people and different cultures and communities being  
13 impacted in different ways by war, that is one of the reasons  
14 that I think -- when you consider the department's mission,  
15 understanding who our people are, who we have access to, and  
16 what they can bring us to accomplish our mission is very  
17 important.

18 Q. Thank you. I'll ask about that research in a minute. But  
19 first I want to ask, has the Department of Defense itself  
20 conducted studies on the benefits of diversity and inclusion in  
21 the military?

22 A. Yes, it has.

23 Q. Can you provide an example of such a study?

24 A. Yes. One of the ones that was up in the earlier  
25 testimony, the Office of People Analytics report.

1 Q. Great. Let's take a look at that report. This is  
2 Plaintiff's Exhibit 275.

3 So you were here in the courtroom when this was addressed  
4 a bit during Mr. Vazirani's testimony?

5 A. Yes.

6 Q. So I understand we've talked about some parts of this  
7 report, but I'm going to ask you about some other sections of  
8 the report.

9 First, let me ask you, though, did you rely on this report  
10 in reaching your conclusions in this case?

11 A. Yes, I did.

12 Q. Can you just explain for the Court broadly what this study  
13 is looking at?

14 A. So, I mean, it says, return on investment for D&I --  
15 diversity and inclusion -- in the military.

16 What the team was focused on was identifying across  
17 different diversity climates that they were able to develop  
18 who's in those diversity climates? How might they be impacted  
19 by different levels of healthy or unhealthy behavior? And what  
20 are the impacts on retention and other readiness indicators  
21 down the road? And what does that do for force composition?

22 Q. Could we take a look at page 15 of this report, which is  
23 in evidence.

24 So just broadly, what is this section of the report  
25 talking about?

1 A. So it's talking about -- forgive me. Let me read the  
2 bottom before I jump in.

3 Q. Take your time.

4 (Witness reading.)

5 A. It's talking about a range of different ideas in there,  
6 but it starts off with how the defendant has, for a long time,  
7 tried to build a more diverse and inclusive department, but  
8 we're not there yet. And there are still problematic  
9 behaviors. We're still seeing disparities in the ranks. So  
10 that's the background here.

11 Q. So to that point, could you just read into the record the  
12 first sentence there about whether the department has met its  
13 goals on diversity and inclusion?

14 A. Yes.

15 "Despite a long history of policies, programs, and  
16 initiatives to improve D&I in the military, the department has  
17 yet to achieve its goal of increasing diversity across all  
18 ranks or eliminating harassment and discrimination."

19 Q. Then looking down into this paragraph, does this say  
20 anything about whether racial and ethnic minorities experience  
21 discrimination at higher rates?

22 A. Yes. And -- sorry. The font is perfect size that my  
23 glasses aren't any help; so I have to back up a second. This  
24 is a new thing.

25 "Findings suggest that racial, ethnic minority members,



1 women, and sexual minority members experience more impediments  
2 at higher rates than their White male and/or heterosexual  
3 counterparts, and those with especially negative experiences  
4 separate from the military at higher rates."

5 Q. Thank you. If we can go back to page 15 of the report and  
6 look at the next paragraph there, starting with "given that  
7 racial, ethnic, gender, and sexual minorities."

8 Can we blow that up, possibly.

9 A. Can you point me.

10 Q. Yeah.

11 A. Okay.

12 Q. There you go. Can you read that, Dr. Haynie?

13 A. Yes.

14 "Given that racial, ethnic, gender, and sexual minorities  
15 are more likely to have negative experiences and rate the D&I  
16 climate less favorably, it is no surprise, then, that we see  
17 diverse representation decline at higher ranks. However,  
18 limited systematic research has been conducted with the  
19 military population to demonstrate the link between D&I climate  
20 and key readiness and retention outcomes that are important to  
21 the military mission and DoD goal to create and maintain a  
22 diverse military force to demonstrate the ROI for D&I  
23 initiatives."

24 Q. All right. So I want to ask you about the second sentence  
25 there.

1 First, do you agree that limited systematic research has  
2 been conducted with the military population on this issue?

3 A. Yes.

4 Q. If that's correct, then how do you know that diverse and  
5 inclusive teams are important in the military context?

6 A. This is something, as a social scientist, that we face, I  
7 would say, fairly regularly. I am not aware of a phenomenon as  
8 complex as war or security about which we know everything.

9 So what we do in social science is, when we're trying to  
10 understand something as complex as war or security or the  
11 military, is we try to examine different pieces of it and try  
12 to knit these together to create a comprehensive whole.

13 I often use the story of the elephant and the blind man in  
14 a room where they're all seeing different pieces of it. And we  
15 each come in as individuals to the world and see our different  
16 pieces of it. What we try to do with this research is to step  
17 back and put together as many pieces as possible and try to  
18 pull those in to understand it as a whole.

19 So for DoD in my role over the last few years in  
20 particular, we focused on trying to pull in and understand what  
21 the broader conflict and security literature tells us, what  
22 other nations' studies are telling us, what do we learn from  
23 international organizations to create that comprehensive  
24 picture.

25 Q. If we could go back to page 15 of the report and zoom out.

1 And while we're doing that, I'll just read the next  
2 section of the report is called "Potential Return on Investment  
3 Indicators for Diversity and Inclusion in the Military."

4 And, again, just broader, Dr. Haynie, what is this section  
5 of the report talking about?

6 A. So this is -- well, the return on investment. So it's  
7 trying to identify what are the outcomes of the current climate  
8 and what might we consider from what we understand about those  
9 outcomes as we consider our diversity and inclusion  
10 initiatives.

11 Q. And if we can go to the next page in this section, it's  
12 page 16 of the report, and take a look at the first  
13 paragraph there.

14 So this is the next page of the report. And what does  
15 this say about the ways in which diversity can help the  
16 military?

17 A. This is a summary -- or a very broad summary of some of  
18 the diversity and inclusion literature out in the general -- in  
19 the general world.

20 Q. Can you just read the first couple of sentences there,  
21 what it says?

22 A. Yes.

23 "Similarly, diversity is shown to create better work  
24 environments. Lastly, diversity is associated with improved  
25 performance outcomes. For example, diversity practices are

1 shown to predict increased worker engagement with this  
2 relationship mediated by trust climate but only when  
3 respondents report high levels of workplace inclusion."

4 Q. Thank you.

5 So with this background on the research, what did this  
6 study try to do?

7 A. This study tried to identify for the military what are  
8 people experiencing? It divided up into five different  
9 diversity climates, and then looked within those diversity  
10 climate groups to look through and see who's in these different  
11 groups from a demographic perspective and what are the  
12 potential retention outcomes during the time of the study and  
13 then projected down the road.

14 Q. Okay. I'd like to turn to some of the conclusions the  
15 authors arrived at. If we could turn to page 7 of the study.  
16 And this is page 7, second paragraph. Is this where the  
17 authors are summarizing some of their conclusions?

18 A. Yes.

19 Q. And, if you can, read -- if you could read just the first  
20 four sentences of this paragraph into the record about what the  
21 authors did and what they found.

22 A. "In phase two, we explored readiness and retention  
23 outcomes among active-duty members from different diversity and  
24 inclusion climate groups. Using survey data, we examined  
25 whether differences existed in retention intention,

1 satisfaction with the military way of life, member and unit  
2 preparedness, member and unit morale, and depression across the  
3 D&I climate groups.

4 "Again, distinct patterns emerged such that those in the  
5 healthy climate group endorsed the highest levels of readiness  
6 and retention intention. In particular, retention intention,  
7 satisfaction with the military way of life, member and unit  
8 preparedness, as well as member and unit morale were the  
9 highest among those who characterized their D&I climate as  
10 healthy and the lowest among those who characterized their D&I  
11 climate as unhealthy."

12 Q. Thank you.

13 Could we look at the first paragraph of this page of the  
14 report. And does this paragraph say anything about which  
15 service members were more likely to identify as being in a  
16 healthy climate group?

17 A. It does.

18 Q. Could you read what it says about that.

19 A. Yes.

20 It says -- do you want me to start at the top -- I think  
21 the "in particular" --

22 Q. Sure. Yeah, let's start there.

23 A. "In particular, active-duty members in the healthy climate  
24 group were more likely to identify as White, male, and/or  
25 heterosexual, whereas those in the unhealthy climate group were

1 more likely to identify as racial/ethnic minority members,  
2 female, and/or not heterosexual."

3 Q. So what does this study tell you about the importance of  
4 diversity and inclusion to military readiness?

5 A. It tells us quite a bit. It tells us that those  
6 experiencing the most unhealthy climates may be experiencing it  
7 in part because of how they present, where they come from, and  
8 those in the healthier climates may not have the same  
9 experiences. It tells us the importance of building teams  
10 through leaders who can recognize how different people may be  
11 impacted by climates and to help mitigate those obstacles and  
12 barriers and build unit morale and cohesion in order to  
13 accomplish the mission.

14 Q. Thank you.

15 You can take this down.

16 Dr. Haynie, have you yourself ever experienced an  
17 unhealthy diversity and inclusion climate?

18 A. I have, yes.

19 Q. Could you tell the Court about that experience.

20 A. Yes. And I'll say, sharing this, I also am incredibly  
21 grateful for my time in service. I got to do some amazing  
22 things and serve with some fantastic people.

23 I also, as going into a field that had not been open to  
24 women, encountered what I would now describe as a pretty  
25 unhealthy climate. Despite the opportunities, there were

1 things that I ran into. And I'll give one brief example and  
2 then a broader one.

3 But the night of my winging, I was pulled aside by a  
4 winging classmate of mine who had wanted one of the Cobra seats  
5 that our class got. And we only had one, and I had earned it.  
6 And in front of my parents and my husband, he accused me of  
7 sleeping my way through flight school to get that seat. So it  
8 kind of started off with a bag. No pun intended. I'm sorry.

9 From there, went to the fleet, where I worked very hard to  
10 continue to progress. I loved what I did. I loved my  
11 squadron. In 2005 I had a baby. I had done three deployments  
12 at that point. My husband left when she was six weeks old for  
13 two back-to-back Iraq company command tours, during which point  
14 I solo parented for the better part of three years. Did not  
15 have access to good childcare. My family was 2,000 miles away.

16 I was a night systems instructor; so I was instructing how  
17 to fly and fight the Cobra on night vision goggles. So I had a  
18 lot of night flights, things like that. I got no help during  
19 that time. And it's taken me a long time to realize how  
20 completely shut out I was. But I ended up driving to work one  
21 day figuring that I was either going to crash the Cobra with a  
22 student in it because I was so exhausted and overwhelmed or  
23 crash the car with my daughter in it. I said, "I can't do this  
24 anymore."

25 And I went in and I turned my papers in to leave active

1 duty. And my former commanding officer, who I ran into later  
2 that day, when he heard -- I was still upset when I ran into  
3 him. And when I told him what I had done and that I couldn't  
4 do it anymore, he said, "Oh, well, you know, as soon as you had  
5 a baby, the writing was on the wall. We knew you would be  
6 getting out."

7 But no one had told me that. And so for two and a half,  
8 almost three years, I worked really hard, and I felt like I  
9 wasn't valued. No one was investing in me. There was a lot of  
10 kind of anger with me when I couldn't fly successive night  
11 flights in a row, no support, things like that.

12 And so I ended up leaving. And the Marine Corps lost -- I  
13 lost the Marine Corps at that point, at least the active-duty  
14 piece of it, and the Marine Corps lost my skills and the time  
15 it had invested in me. So yes, I've lived in that.

16 Q. Since those experiences, has the Department of Defense  
17 done anything to address those issues?

18 A. Yes, it has.

19 Q. What has it done?

20 A. I'll say first and foremost that this is an issue that  
21 gets talked about now. It is a known obstacle, like, both the  
22 climate issues around this and in knowing that parents --  
23 people of different backgrounds can run into these kinds of  
24 obstacles.

25 There have been changes to parental leave policies, to



1 childcare access, availability, those kinds of changes,  
2 mentorship networks. I had no mentors. The first time I  
3 served with a woman who was senior to me was at the 19-year  
4 mark -- I'm sorry -- 20-year mark in my career.

5 So I had no one to talk to about any of this. And so a  
6 lot of those ideas that have become changes -- pilot programs,  
7 intervention pilot programs for careers -- came from groups  
8 that were formed such as women's initiatives to suggest  
9 different ideas like this to the Department of Defense.

10 Q. In addition to conducting its own studies on diversity and  
11 inclusion in the military, has the Department of Defense relied  
12 on research from outside academics to inform its military  
13 judgments in this regard?

14 A. Yes, it has.

15 Q. Can you provide an example.

16 A. Yes. Dr. Jason Lyall's work, who I think you'll hear from  
17 later today, was another study.

18 Q. So we will be hearing from Professor Lyall himself later  
19 today; so I won't ask you to go into detail about his research.  
20 But could you just describe at a high level what Professor  
21 Lyall did and what he found?

22 A. Yes. And I'm a little bit uncomfortable describing his  
23 research in front of him because I know he's going to have  
24 better words.

25 But he built a database called Project Mars through which

1 he and his research team looked at conventional battles over, I  
2 believe, 211 years of warfare, 1800 to 2011. And what they  
3 found was that military inequality, specifically ethnic  
4 equality, was linked to battlefield performance. The greater  
5 the inequality, the more poor the performance on the  
6 battlefield.

7 Q. You said DoD has relied on Professor Lyall's research?

8 A. Yes.

9 Q. Has he spoken to the Department of Defense about it?

10 A. Yes.

11 Q. Okay. Separate from studies that it's done, has DoD  
12 commissioned studies on the value of diversity and inclusion to  
13 the military?

14 A. Yes.

15 Q. Can you provide an example of such a study?

16 A. There are numerous RAND studies that we have -- that the  
17 department has sponsored over years, CNA, other organizations.  
18 There's one RAND study in particular that I think would be  
19 helpful here. It's on WPS -- I'm going to mess up the name.  
20 It's on women, peace, and security in action.

21 Q. I think we have that. If we could take a look at  
22 Defendants' Exhibit 170.

23 Is this the RAND study that you were just talking about?

24 A. Yes, it is.

25 Q. Is this one of the studies that you relied on in forming

1 your opinions in this case?

2 A. Yes.

3 Q. I don't know that -- I don't think this is necessary --  
4 there are no objections -- but in an abundance of caution --

5 THE COURT: It'll be admitted into evidence.

6 BY MR. ROBINSON:

7 Q. What is one of the things that you find important about  
8 this study?

9 A. I found this study particularly compelling because it --  
10 it illustrates in a number of ways how different people can be  
11 impacted differently by war and security phenomena and how  
12 including that kind of understanding and consideration of those  
13 different impacts in our decision-making processes and plans  
14 can be very effective.

15 Q. Can you provide an example of that?

16 A. Yes. There are a number of vignettes in this. There's  
17 one on Operation Allies Welcome in 2021 that I think is  
18 helpful.

19 Q. If we could turn to page 32 of the study.

20 Is this where the authors discuss Operation Allies  
21 Welcome?

22 A. Yes, it is.

23 Q. And what was the operation, and why do you find it  
24 important?

25 A. So very broadly, Operation Allies Welcome was the

1 operation that was led by NORTHCOM as we departed Afghanistan  
2 in 2021, but this specific operation was geared on getting  
3 those members -- or people from Afghanistan who had supported  
4 our mission, supported our military, supported our government  
5 in different ways -- out, those who wanted to leave, and get  
6 them out to safe places within the United States.

7 What I found interesting about this is not so much the  
8 focus of the operation itself but how it functioned. So we  
9 made some assumptions early on, the government did, that the  
10 people leaving would be primarily military-aged males. And  
11 what actually -- the people coming out of Afghanistan to  
12 America were not primarily military-aged males; they were men,  
13 women, families, children, elderly, things like that.

14 And there are -- there are billets and leaders in DoD  
15 called gender advisers who are assigned to the different  
16 services and combatant commands at different levels. And those  
17 gender advisers advocate for including gender considerations,  
18 which can also be intersectional in operational planning to  
19 ensure that those plans are as well-thought-out as possible,  
20 kind of getting at what I've been saying is the need to include  
21 those perspectives.

22 Unfortunately, in the planning phase for this operation,  
23 they were initially kind of disregarded. Leadership did not  
24 overall seem to trust the gender advisers, that they would  
25 provide solid advice or that the advice would be helpful.

1 But then people started coming into America, and they  
2 found that the -- those people who needed our help needed  
3 access to different kinds of nutrition -- baby formula,  
4 children's food, access to medical care that was not for men,  
5 needed access to, you know, toilet areas that were well lit,  
6 that were safe, different educational needs.

7 And the gender advisers who had been kind of identifying  
8 these needs all along, suddenly the value of that was  
9 understood at a higher level. So they were brought in more  
10 comprehensively to the planning process at that point. And I  
11 found this very interesting because it shows how what we do as  
12 a nation and what the Department of Defense does and how it --  
13 how it develops and conducts its missions can be improved by  
14 the inclusion of these different perspectives.

15 **Q.** So this example you've been talking about is an example of  
16 gender diversity, I take it. What, if anything, does it tell  
17 you about the importance of racial and ethnic diversity?

18 **A.** Well, first and foremost, we're all intersectional people.  
19 So I'm not just a woman; I'm a White woman, come from New  
20 Orleans, got a little Cajun, right? I also belong to a number  
21 of different groups. Each of us comes from all these different  
22 backgrounds. Cognitive diversity, experiential diversity, all  
23 of these combine to make us who we are and how we experience  
24 the world and how we see it.

25 To understand something as complex as war and security

1 phenomena, we need to try to see those phenomena through a wide  
2 range of different lenses. This is an example of one piece of  
3 it. It's not enough. There are others. And I know we're  
4 going to talk some about that.

5 **Q.** You mentioned in your answer cognitive diversity. What  
6 does racial and ethnic diversity have to do with cognitive  
7 diversity?

8 **A.** Well, it really depends. So there are different kinds of  
9 diversity. Cognitive diversity is how we think. It can be  
10 impacted by how we see the world and what we've experienced.

11 Racial and ethnic diversity is another piece of this. I  
12 like the example of gender because, while women are not a  
13 minority around the world, we are a minority in the security  
14 institutions around the world pretty much across the board. So  
15 when I think about myself as a woman in the Marine Corps, I was  
16 a minority in the Marine Corps.

17 There is data that shows that the more equality for women  
18 in a nation, the less conflict, the less violent conflict  
19 exists in that nation. The same is true for minorities.

20 When we think about minorities, conflicts -- a leading  
21 cause of conflict around the world can be the treatment of  
22 minorities, how different minority groups are treated by the  
23 government, by the military, their access to power and  
24 resources.

25 And so there's also data through a number of different

1 organizations that talk -- that demonstrate that there's a  
2 similar link between the treatment of minorities and the  
3 conflict -- likelihood of conflict. So I see parallels in all  
4 of those.

5 Q. Are you suggesting, Dr. Haynie, that all racial and ethnic  
6 minorities think in a certain way?

7 A. No, I'm not.

8 Q. So what are you saying?

9 A. I'm saying that, broadly, the research talks about how you  
10 need to bring in different perspectives -- diverse perspectives  
11 to understand war and security phenomena. And one part of  
12 those diverse perspectives can be race and ethnicity.

13 Q. Thank you.

14 We can take down this exhibit.

15 Dr. Haynie, has the Department of Defense relied on other  
16 RAND studies about the value of diversity and inclusion in the  
17 military?

18 A. Yes.

19 Q. Could we take a look at Plaintiff's Exhibit 597.

20 Is this one of those studies?

21 A. Yes, it is.

22 Q. Can you just read the title there.

23 A. "Leveraging diversity for military effectiveness:  
24 Diversity, inclusion, and belonging in the UK and U.S. Armed  
25 Forces."

1 Q. Did you rely on this study as one of the sources in  
2 forming your opinions in this case?

3 A. I did.

4 Q. So I think this is in evidence now. Can you summarize  
5 what this study did?

6 A. Yes. This study looked from the perspective of the U.S.  
7 and UK armed forces at what their strategic priorities and  
8 needs and challenges were and from that identified the ways in  
9 which diversity and inclusion could be an advantage across  
10 those priorities.

11 Q. Okay. I'd like to ask you some questions about certain  
12 parts of this study. If we could look at page 19. So just  
13 looking at the text here, can you tell what this section of the  
14 study is broadly talking about?

15 A. This is a section that talks very broadly at the first  
16 sentence. It's about the growing body of research around  
17 diversity and inclusion, which we've mentioned a couple times,  
18 but that different military organizations around the world are  
19 also recognizing this value, and I'd say international  
20 organizations as well.

21 And so as we think about the strategic environment and the  
22 challenges and the adversaries that we face, they have a vote  
23 too. And so knowing that we need every advantage we can get,  
24 diversity and inclusion can provide some of those advantages.

25 Q. Can you just read the very first sentence of this section



1 here on the screen.

2 A. Yes.

3 "Supported by a growing body of literature on diversity  
4 and inclusion, many military organizations now recognize and  
5 foster the contributions of diversity to military readiness and  
6 other elements of organizational effectiveness."

7 Q. All right. If we could turn to page 21 of this report.

8 So I think this section is talking about a literature  
9 review that the authors of the report did. And can you just  
10 read into the record, I think, starting with the second  
11 sentence of this paragraph that summarizes what the authors  
12 did?

13 A. Yes. The authors -- I'm sorry.

14 "The research team conducted a comprehensive review of  
15 existing academic and nonacademic literature such as government  
16 reports and policy and strategy documents to identify existing  
17 findings regarding links between diversity and organizational  
18 effectiveness in the military as well as in related contexts  
19 such as international development, peacekeeping, and research  
20 and development."

21 Q. Okay. I want to ask you now about some of the authors'  
22 findings based on this review.

23 If we could turn to page 23 of this report.

24 Does this page of the report summarize what the authors  
25 found about this literature?

1 A. Yes. It covers some of it. I believe it may continue  
2 on --

3 Q. Yes.

4 A. Yeah.

5 Q. So just starting at the bottom left there, the section  
6 titled "Enhancing organizational capacity for innovation,  
7 adaptation, and quality of decision-making," could you read in  
8 the first sentence there what it says about the existing  
9 literature.

10 And we can try to zoom in if that would be helpful.

11 A. I can see it.

12 Q. Okay.

13 A. "Existing literature recognizes the role of diversity in  
14 improving organizational outcomes such as innovation,  
15 performance, problem-solving, knowledge creation, and  
16 organizational commitment. While studies have shown mixed" --

17 Q. No, please go ahead. Please go ahead.

18 A. "While studies have shown mixed results concerning the  
19 implications of diversity on team performance, overall  
20 diversity is believed to increase team innovation and effective  
21 decision-making due to factors such as greater cognitive  
22 heterogeneity and debate in diverse teams."

23 Q. Thank you.

24 We can go back to the page and just look at the second  
25 section there.

1        So this second section of the page of the report is titled  
2 "Fostering external legitimacy: Enhancing ability to project,  
3 influence, and improving engagement with partners, allies, and  
4 domestic and international audiences."

5        Just broadly, what is this concluding?

6 A.    So this section is broadly talking about how we have to be  
7 a respected domestic institution, but we also have to work in  
8 environments around the world with other militaries and with  
9 other nations. And so having diversity inclusion supports  
10 those efforts.

11 Q.    And if we could turn to the next page of the report,  
12 page 24, I'll direct your attention to the section titled  
13 "Improving the armed forces' ability to attract, retain, and  
14 foster skills needed to address current and evolving national  
15 security imperatives."

16        Again, broadly speaking, what is this saying?

17 A.    So this is saying a little bit of what I was talking about  
18 earlier with regards to numbers. So it's saying we need  
19 numbers, right, but we also need quality people. And so  
20 fostering diversity and inclusion can help us both from a  
21 numbers perspective and can ensure that we're bringing in  
22 people with the skill sets and experiences that can help us  
23 accomplish our mission.

24 Q.    Thank you.

25        We can take that down, and we can take down the exhibit.

1 Dr. Haynie, you've talked a bit about how diversity and  
2 inclusion can help teams function. Can you say some more about  
3 what the research says about how diversity and inclusion can  
4 help teams function.

5 A. Yes, I can.

6 So there's -- there is a broad diversity and inclusion  
7 literature out there that is not directly focused on DoD; it's  
8 focused on teams broadly and institutions, organizations around  
9 the country and the world. And it says there are ways in which  
10 diverse and inclusive teams can provide benefits such as  
11 increased creativity and innovation, problem-solving in complex  
12 environments. And it talks about homogeneity in teams as being  
13 a risk and vulnerability because it can have the opposite  
14 effect.

15 Q. Now, to your knowledge, has the Department of Defense ever  
16 done a wide-ranging study that examines whether diverse teams  
17 solve complex problem sets better than nondiverse ones in the  
18 military setting?

19 A. No, not to my knowledge.

20 Q. To your knowledge, has DoD ever commissioned such a study?

21 A. No, not to my knowledge.

22 Q. Are you aware of any reasons why the department has not  
23 commissioned such a study?

24 A. There are a number of constraints. I think that would  
25 make such a study challenging, not impossible, but challenging.

1 Logistically, there are a lot of people at DoD. We're in the  
2 vicinity of 3 million people. So determining how to study an  
3 organization that large could be really challenging.

4 Obviously, you know, you'd have to consider whether you want  
5 different population elements and then how robust would it be.

6 There are also some ethical considerations about this.  
7 First and foremost is that, if we're studying people in  
8 warfighting organizations and in conflict environments, there's  
9 an introduction of risk there that would have to be considered  
10 significantly. And the absence of that risk could shape the  
11 results in ways that would not be helpful.

12 And, then, as someone who has worked in social science,  
13 I'll say human subject protections would be significant in  
14 this. So that would be a large mountain to climb. So I would  
15 imagine those all combine to make it a challenge.

16 **Q.** Given that the Department of Defense hasn't done a  
17 wide-ranging study on whether diverse teams perform better than  
18 nondiverse teams in the military context, how can you conclude  
19 that diversity and inclusion are important to the functioning  
20 of teams in that context?

21 **A.** My roots are in the Marine Corps. And then understanding  
22 war, I was actually newer to the diversity and inclusion  
23 literature in the past 10 years. So, for me, understanding war  
24 and security are key to part of this.

25 And so, as I mentioned earlier, it's kind of like the

1 elephant, or seeing different slices of it. We want to pull in  
2 as much as we can from different sectors of whether it's  
3 academia or government to understand these phenomena and how  
4 people in warfighting or security organizations could be  
5 impacted.

6 So it's about building a comprehensive picture but also  
7 continuing to update it. This is not a one and done. We need  
8 to continue to learn and to grow. I mean, there are conflicts  
9 going around the world right now that we can continue to learn  
10 from.

11 Q. And I think you spoke earlier that there's some research  
12 on diverse teams performing better than nondiverse teams in  
13 other contexts. Can you provide some examples of those  
14 studies?

15 A. Yes. So I'm trying to remember -- sorry. I just had a  
16 moment. There's a -- there's currently a study underway for  
17 DoD. I don't know enough about that one to speak on this.  
18 It's currently funded.

19 There are also studies by RAND and CNA. I know we -- you  
20 know, in some of my disclosure and the declaration I talked a  
21 bit about, like, UN studies -- or UN reports and NATO studies.

22 Q. Are you suggesting, Dr. Haynie, that racially and  
23 ethnically diverse teams will always be better at, say,  
24 entering and clearing a room as a nondiverse team?

25 A. No, I'm not.

1 Q. So, again, what are you saying?

2 A. I'm saying that, broadly, the research shows -- or  
3 demonstrates that, when we talk about war and security, we have  
4 to look at that human element. We have to understand it. And  
5 to be optimal in our response, we have to be able to consider  
6 it, design strategies, and conduct our actions around that.

7 I'll give another example.

8 So I gave a brief at the National Security Council in  
9 2019. And on my way out, I spoke about at the time terrorism,  
10 different aspects of terrorism, specifically gender norms  
11 around masculinity and femininity and terrorism.

12 And on the way out, I got pulled aside in the hallway by  
13 someone who thought that -- if I could not provide an example  
14 of a woman besting a man in hand-to-hand combat on the  
15 battlefield, then the research wasn't worth anything. And I  
16 was concerned by that.

17 There are different instances through history, if we want  
18 to go that tactical. But what I was talking about was that  
19 that moment of kinetic action is the one in an infinite chain  
20 of events that lead up to that moment.

21 So at every one of those moments of decision-making,  
22 infinite, before you get there, the right person with the right  
23 skill set and the right team with the right leader may be the  
24 difference maker. And that's what I was talking about with the  
25 research.

1 And that's what I see here as so important is we cannot  
2 plan for every situation. That would be impossible. But to  
3 ensure that we have units and teams in the military that is as  
4 adaptive and flexible as possible, we need to seek out those  
5 diverse perspectives and experiences and skill sets.

6 Q. We've been talking about how diversity and inclusion can  
7 support military effectiveness and mission accomplishment.  
8 When you say diversity and inclusion, are you talking about the  
9 enlisted corps or the officer corps or something else?

10 A. I'm talking about the entire military, which does include  
11 the officer corps.

12 Q. And why is diversity and inclusion important to the  
13 officer corps, in your opinion?

14 A. So, obviously, I've been an officer. I've served with  
15 officers. Officers set the tone and culture for their units.  
16 They -- they are responsible for accomplishing what can be very  
17 complex nuanced missions in very challenging environments with  
18 a team and ensuring that the folks that they have on their team  
19 are able to perform optimally to their best and that mistakes  
20 or weaknesses or vulnerabilities are minimized. It's a pretty  
21 significant job.

22 And so the officer corps, in my mind, has an outsized  
23 influence in how we lead the department and the missions that  
24 we face and how we rise to meet those.

25 Q. Thank you.



1           **MR. ROBINSON:** I'm about to move on to another topic.  
2 I see the time. I don't know if this would be a good --

3           **THE COURT:** Yeah, well, you're about to go to the  
4 second of her four opinions on diversity and inclusion support,  
5 recruitment, and retention, I guess?

6           **MR. ROBINSON:** There's a little bit more on the first  
7 opinion, but's it kind of a different aspect of it. So it  
8 might --

9           **THE COURT:** Okay. That's fine. We'll take our  
10 one-hour recess, and we'll start again at 2:00. This Court  
11 stands in --

12           Dr. Haynie, you shouldn't discuss your testimony with  
13 anyone while you're on the witness stand. So usually the best  
14 thing is just to have lunch by yourself when you're on the  
15 witness stand. So...

16           **THE WITNESS:** Okay.

17           **THE COURT:** With that, we'll take a one-hour break for  
18 lunch. Thank you.

19           **THE CLERK:** All rise. This Honorable Court is now in  
20 recess.

21           (A recess was taken from 1:00 p.m. to 2:03 p.m.)

22           **THE COURT:** Dr. Haynie, you're still under oath.  
23 Mr. Robinson, you may continue.

24           **MR. ROBINSON:** Thank you.

25 **BY MR. ROBINSON:**

1 Q. Good afternoon, Dr. Haynie.

2 So before the lunch break I think you were talking about  
3 the importance of diversity and inclusion to the officer corps,  
4 and you were talking about how officers set the tone and  
5 culture.

6 Based on your experience as a graduate of the Naval  
7 Academy and your experience at the Department of Defense, what  
8 role does the Naval Academy play in shaping the officer corps?

9 A. I think it plays a key role in that.

10 Q. And in that sense, how is the Naval Academy different from  
11 other public and private universities?

12 A. It's -- you know, it's funny. My oldest is a sophomore in  
13 college at St. John's College, the nonfree school in Annapolis  
14 is what we say jokingly. But she, the other day, made a  
15 comment about, well, it was lucky for my husband and I because  
16 we just got handed jobs after graduation. We were like, "Sit  
17 down." We had a long conversation with our child about the  
18 difference.

19 And I'll try to put this into words that are useful here.  
20 Within a few weeks of graduating, members of my class were  
21 leading soldiers -- or I'm sorry, not soldiers -- sailors and  
22 Marines in different places. Within a few months, even more of  
23 them. Within a year, we had classmates deployed around the  
24 world in charge of sailors and Marines in all kinds of  
25 different contexts. Three years after I graduated was 9/11. I

1 had a classmate who was in the Pentagon and was killed that day  
2 in the Pentagon by the attack.

3 I cannot think of a job that is like that, that is not a  
4 job; it's a lifestyle. And the duties that we have as leaders  
5 starting from day one of Plebe Summer are impressed upon us in  
6 every element of our training, to understand the gravity of the  
7 office that we're entering into, to understand the gravity of  
8 the mission set that we have -- that we have to face, and not  
9 just face on our own, but we are responsible for leading others  
10 through, that sticks with you.

11 Two weeks into Plebe Summer -- a week into Plebe Summer,  
12 the initial summer at the Naval Academy, two of my junior year  
13 squad leaders two years older than us took us to the Naval  
14 Academy cemetery to show us tombstones of midshipmen who had  
15 passed away and people we have lost. And that has stuck with  
16 me. I mean, Memorial Hall -- if you have not been at Memorial  
17 Hall in The Yard, it's a sobering experience. It is not a  
18 normal college.

19 Q. Earlier in your testimony, you mentioned relying on some  
20 of the studies we've looked at as well as your personal  
21 experiences in forming your opinions in this case.

22 In forming your opinion that diversity and inclusion can  
23 support military effectiveness and mission accomplishment, did  
24 you rely on your own personal experiences in the Marine Corps?

25 A. I did.

1 Q. What experiences did you rely on?

2 A. I would say broadly I drew two key points from my  
3 experiences.

4 One was that different people can see different things,  
5 particularly in the security environment, that may not be  
6 things that are normally accepted by the organization as a  
7 whole if it is not open to those experiences and those  
8 perspectives. And I'll give you an example of that in a  
9 moment.

10 But I also learned that when an organization is -- when  
11 the culture is not conducive to people who don't look like or  
12 fit in with the norm being there and sharing their opinions, it  
13 can drive them out. It can make those opinions harder to get  
14 through to leadership and to pathways of decision-making. And  
15 I'll give you an example about that.

16 My plebe year, my freshman year at Navy, I woke up one  
17 morning around 3:00 in the morning to find a man in my room  
18 with his hand on my leg. I lay there very quietly for a while,  
19 moved his hand around, and eventually he left. I shared the  
20 story with some female classmates and found that that was not  
21 an unheard-of experience for a female midshipman at the Naval  
22 Academy.

23 My summer before my senior year I was sexually assaulted  
24 at the Naval Academy by a classmate, and I did not talk about  
25 that for another 16 years.

1 Those experiences combined to teach me that I didn't  
2 necessarily have the same level of safety or the same voice or  
3 the same welcome in the organization. There were other  
4 experiences. Those were two that I'll highlight.

5 I shared my winging experience, the night of my winging,  
6 at what was a celebratory event and took a little bit of a dark  
7 turn there.

8 I also, during time on a Navy ship, found that myself  
9 along with one of my female colleagues were followed by a  
10 sailor, kind of watched -- watched and followed around the base  
11 too once we debarked in Iraq. Where my mind should have been  
12 focused on the mission we had and our adversary in Iraq, I  
13 found that I was distracted at times because we had an  
14 incident, for example, near the town of Al-Kut in the early  
15 days of the operation where my division of four aircraft -- I  
16 was one of eight pilots across those four aircraft and I was  
17 the only female one.

18 We were walking around the forward area and refueling  
19 point where we had parked to get more ordinance and more fuel,  
20 and we passed a small group of all-male infantry Marines, one  
21 of whom yelled out a sexual comment that came to me as very  
22 vaguely threatening in tone. I didn't hear the full comment.  
23 I didn't hear all of the words; I understood the gist. And one  
24 of my combat crew members went and basically lit the guy up.

25 But what that told me was that I was not necessarily

1 welcome or safe in the Marine Corps. And that'll get in your  
2 head. And it'll get in your head repeatedly, especially when  
3 it happens over and over.

4 When I -- one of the experiences that I had flying at  
5 night, particularly because we did most of our flying at night  
6 on night vision goggles after midnight, 2:00 in the morning,  
7 for a wide range of reasons, I would notice -- one of the  
8 observations I had -- and we talked about this a bit in the  
9 deposition -- was that is -- we would fly over these houses  
10 along the towns along the river, and we would see families  
11 sleeping up on the roofs of their houses.

12 And as we would go over, we were, like, 2 or 300 feet over  
13 those houses, and I remember looking and seeing flashes of  
14 these families, like grandparents and kids -- and I didn't have  
15 kids at the time myself. But what I thought about what are we  
16 doing with these families? We've got to be scaring the heck  
17 out of them.

18 A couple days later, I made that observation to a couple  
19 pilots in my squadron and quickly got the idea that that was a  
20 soft thing to comment on and not something that really was  
21 worth talking about. So I kept future observations like that  
22 to myself. It took a long time for me to understand that my  
23 value actually came in the form of some of those observations.

24 But those experiences combined to teach me, one, that we  
25 can each as individuals but particularly as individuals who

1 don't necessarily fit the norm, may see something outside of  
2 what the institution or the organization sees and that, if we  
3 feel that we are not welcome or are even unsafe to some degree,  
4 we may not be willing to share those observations.

5 **Q.** You testified on direct that, after your time in active  
6 service, you went to -- you went back to school studying these  
7 issues. What did your time getting your master's degree, your  
8 PhD teach you about these issues and these experiences?

9 **A.** Actually, I went back to school not really thinking even  
10 so much about the experiences I had as a woman but the  
11 experiences I had as a Marine in Iraq. Because that was 2009,  
12 when things had been changing over the last few years in Iraq  
13 and Afghanistan, and I wanted to understand better the  
14 decision-making processes that got us into those wars.

15 I went -- you know, it kind of -- almost offhand at one  
16 point started looking at the human factor. And that's when I  
17 discovered that my experiences were not mine because I was a  
18 woman; my experiences were mine potentially because I was a  
19 minority in an organization that was not necessarily welcoming  
20 to people like me.

21 And that's -- you know, I use the term "gender" was kind  
22 of my gateway drug getting into that. Excuse the colloquialism  
23 in there. But it really got me into understanding the human  
24 face of war, the human face of warfighting institutions and how  
25 much that can shape security and our national security

1 priorities in what we do.

2 Q. Thank you. I'd now like to turn to the second opinion  
3 that you're offering in this case. If we could go back to  
4 Defense Demonstrative 4.

5 And could you just read for the Court again what your  
6 second opinion that you're offering is.

7 A. Yes. That diversity and inclusion support recruitment and  
8 retention.

9 Q. Thank you.

10 We can take that down.

11 Dr. Haynie, why is recruitment and retention important to  
12 the military?

13 A. And I know Mr. Vazirani said this earlier, that we have an  
14 all-volunteer force; so we have to fill it. We have to have  
15 capable, qualified, skilled people who are dedicated and driven  
16 and want to be there to fill those seats. And it's not just,  
17 you know, square peg, square hole. We have to figure out the  
18 right kinds of skill sets and experiences and talents and who  
19 to access and bring in. So we need people to run the  
20 organization.

21 Q. When you were working at the Department of Defense, did  
22 you become aware of certain challenges the department faced as  
23 it relates to recruitment and retention?

24 A. I did.

25 Q. Are there any external constraints on the military's



1 ability to recruit and retain talent?

2 A. There are. I mean, the American public has a vote too.  
3 And I think one of the -- one of the pieces that has really  
4 stuck with me was the drop in qualified youth. So I believe we  
5 are down around 23 percent of youth today are qualified fit to  
6 serve in the military.

7 They can be disqualified for a range of reasons, to  
8 include drug use, mental health, physical health, criminal  
9 records, education level. But there's also a propensity issue.  
10 So propensity is less than qualified. I believe propensity is  
11 around 9 percent right now.

12 Q. Generally speaking, over time, is youth propensity to  
13 serve in the military increasing or decreasing?

14 A. It's decreasing.

15 Q. And do you know whether youth propensity to serve in the  
16 military varies across racial and ethnic groups?

17 A. Yes. I believe it is stable -- well, you asked about  
18 racial and ethnic groups. I was going to say it seems to be  
19 stable for gender. It is higher for African American and  
20 Hispanic people.

21 Q. Does the Department of Defense track these statistics?

22 A. Yes, they do, through the Office of People Analytics.

23 Q. I think we have one of the office's reports here if we  
24 could look at Defense Exhibit 187.

25 Is this one of those --

1 And this is already in evidence.

2 Is this one of those propensity updates?

3 A. Yes, it is.

4 Q. And could you just read what year this is from.

5 A. This is the fall of 2022 propensity update.

6 Q. If we could take a look at page 5 of this update, what are  
7 we looking at here?

8 A. So this is tracking propensity across different race and  
9 ethnic groups from 2021 through 2022.

10 Q. What does it show just looking at the statistics here?

11 A. It shows that if you look at the red and orange bars on  
12 the top of the graph, that is Black and Hispanic propensity.  
13 The gray line is Asian propensity, and the blue line is White  
14 propensity. So it shows the different propensity levels.

15 Q. And do you see any trends about the Black and Hispanic  
16 propensity to serve in the military over time as compared to  
17 White youth?

18 A. Yes. They are greater.

19 Q. So over time --

20 A. Over time, yes. I mean, you can see a slight dip there it  
21 looks like late '05 or early '06 where there's some crossing of  
22 Black and White, but it then breaks back across. And then  
23 again fall of 2020. But yes, the trend is that it is higher.

24 Q. What, if anything, does this tell you about how diversity  
25 and inclusion can support recruitment in the military?

1 A. It tells me that we need to concentrate -- I need to stop  
2 doing that -- where the Department of Defense can -- it can pay  
3 dividends for the department to focus on where the propensity  
4 is highest.

5 Q. Has the Department of Defense evaluated whether diversity  
6 and inclusion climate impacts retention issues?

7 A. Yes, it has. The Office of People Analytics study that I  
8 mentioned covered that in some detail.

9 Q. Okay.

10 We can take this down.

11 I won't pull up the OPA study since we covered it earlier,  
12 but I do want to ask you, in addition to that study and the  
13 statistics we just looked at, did you rely on your own personal  
14 experiences again in reaching this conclusion about the  
15 importance of diversity and inclusion to recruitment and  
16 retention?

17 A. Yes. And I related that story earlier about my years  
18 after having a baby and what that experience taught me.

19 Q. Thank you.

20 Can we go back to Defense Demonstrative 4, turning to your  
21 third opinion.

22 Could you read for the Court your third opinion in this  
23 case.

24 A. Yes. It is that diversity and inclusion support the  
25 domestic and international legitimacy of our fighting forces.

1 Q. Thank you.

2 We can take that down.

3 Dr. Haynie, have you reviewed research and studies on  
4 whether diversity and inclusion can support the domestic  
5 legitimacy of our fighting forces?

6 A. Yes, I have.

7 Q. Based on your review of that research, how can diversity  
8 and inclusion support the domestic legitimacy of our fighting  
9 forces?

10 A. So there are a number of ways. And this specific argument  
11 overlaps as well with 1 and 2 to some degree.

12 But when we are talking about domestic impacts, one topic  
13 I would cover on that is the ability to reflect and relate to  
14 the breadth of America.

15 I know -- you know, I've mentioned my own experience in  
16 not working with or having any other women in the community.  
17 That plays out in different ways across the military.

18 We need to -- especially given that we have an  
19 all-volunteer force and, as a result, there's a risk inherent  
20 in that of growing further and further away from the rest of  
21 the nation and creating kind of a warrior class. There are  
22 nations where that's happened, and it's not always a good  
23 thing.

24 So being able to reflect and represent America and be seen  
25 by American citizens as a respected, legitimate institution is

1 important.

2 I would also say we have to lead different teams within  
3 the military. So there's a legitimacy aspect of -- you know,  
4 you don't want someone leading a team that looks completely  
5 different from them all the time because that'll start kind of  
6 showing a break between what could be a warrior class and the  
7 larger department.

8 So those are two reasons. There's also a recruitment and  
9 retention aspect of it that I think we've covered a little bit  
10 already.

11 Q. Dr. Haynie, have you reviewed research on whether  
12 diversity and inclusion can support the international  
13 legitimacy of our fighting forces?

14 A. Yes, I have.

15 Q. What kind of research have you looked at on that question?

16 A. Some academic literature. Also, this is a topic that has  
17 some interest from international bodies as well, such as the UN  
18 and NATO. For example, there's a UN special rapporteur in  
19 minority rights who issues an annual report to the UN who  
20 speaks about -- these reports talk to the importance of  
21 understanding how minority group oppression, underresourcing,  
22 disempowerment often leads to conflict. It's one of the main  
23 drivers of conflict and insecurity around the world.

24 And so to successfully operate and understand that  
25 environment and also to draft strategies and plans that you can

1 execute that are responsive to that and effective in responding  
2 to conflict, they recommend having a minority framework where  
3 you include minority individuals in positions of leadership in  
4 decision-making places in an organization.

5 So those also comply with democratic norms. So we are a  
6 democracy. Democratic norms call for representation and  
7 inclusion across a nation. If we're going to go operate in  
8 multicultural, multinational, diverse environments around the  
9 world, we have to be able to operate effectively in those  
10 environments both with other militaries and security  
11 organizations that we engage with as well as with the people  
12 who live there. Because where we go, people also live and  
13 communities live.

14 So there's -- but there's also a walk-the-walk piece of  
15 it. If we show up as a nation and say you all need to go do  
16 this but we're not doing it ourselves, that can decrease our  
17 legitimacy as well.

18 **Q.** Thank you.

19 Dr. Haynie, we've discussed several studies today. Are  
20 these the only studies that you relied on in reaching your  
21 conclusions?

22 **A.** No. There are a number of other studies that are  
23 contained in my disclosure as well. And then, beyond that,  
24 there's kind of a broad scope of studies that I've looked at.

25 **Q.** Okay. I'm going to show you a few of those just briefly

1 on the screen. I'm not going to go through each one in detail  
2 and ask you what I found, but we're just going to move them  
3 into evidence.

4 I don't think there are any objections to these.

5 So if we could take a look first at Defense Exhibit 130.

6 Can you tell what this document is?

7 A. Yes. This is one of the NATO studies that I just  
8 mentioned.

9 Q. Did you rely on it in reaching your conclusions in this  
10 case?

11 A. Yes.

12 Q. So I believe this is now in evidence. Could we take a  
13 look at Defense Exhibit 135.

14 Can you tell what this document is?

15 A. Yes. This is Hong and Page, one of the early studies  
16 around diversity in broad context.

17 Q. And did you rely on it in forming your opinions in this  
18 case?

19 A. Yes, I did.

20 Q. Okay.

21 Can we take a look at Defense Exhibit 168.

22 We can turn to the next page if it would be helpful, but  
23 if you can tell from this what this is.

24 A. Yes, I can. I relied on this as well.

25 Q. Okay. And what is it?

1 A. It's a Journal of Strategic Studies publication on the  
2 civil-military relationship and how diversity can support that.

3 Q. Okay.

4 Take a look at Defense Exhibit 171. It might be helpful  
5 to take a look at the next page as well, maybe the next  
6 page after. Yeah. Great.

7 This study, I think, is maybe not mentioned in your  
8 report. But do you know if this is a study commissioned by the  
9 Department of Defense on these issues?

10 A. It is, yes.

11 Q. Okay. The next study is Defense Exhibit 172.

12 Can you tell what this is?

13 A. Yes. This is a study that I've relied on.

14 Q. Can we look at Defense Exhibit 173.

15 What is this document?

16 A. This is a Combat Studies Institute document that -- that  
17 discusses material around our engagements in the Middle East  
18 and some of the lessons learned from that.

19 Q. Take a look at Defense Exhibit 176. Same question. Do  
20 you recognize this? Did you rely on it?

21 A. Yes, I did. I did.

22 Q. Take a look at Defense Exhibit 182.

23 What is this document?

24 A. This is one of the United Nations reports that I  
25 referenced, the special rapporteur on minority issues.



1 Q. Okay. And last, Defense Exhibit 183.

2 What is this?

3 A. This is another study that I am familiar with that we  
4 relied on as well.

5 Q. Could you say just a little bit more about this -- about  
6 this study, what it did, what it found, who the author was.

7 A. Yes. This is a team of researchers. This is actually a  
8 fascinating study. So in -- from, I believe, 2013 through  
9 2016, the Marine Corps had a experimental group, the Ground  
10 Combat Element Integrated Task Force. And this was formed  
11 around the time when the Secretary of Defense and the Chairman  
12 of the Joint Chiefs of Staff directed the services to consider,  
13 you know, how they would open up field combat occupations to  
14 women. And they had a certain amount of time to study the  
15 issue and request an exception to that policy.

16 And the Marine Corps had this integrated task force  
17 experiment where they combined junior women in small-fire teams  
18 of, I believe, four to five Marines at the junior enlisted rank  
19 and assessed their ability to complete a range of tasks. The  
20 Marine Corps simultaneously invited a team of researchers --  
21 and you can see the names there -- to study those teams and to  
22 kind of study them from a leadership and decision-making team  
23 performance perspective. And this is a publication from that  
24 team, not the Marine Corps itself.

25 And what that independent team observed was that, for the

1 Marine Corps, in these junior enlisted teams performing basic  
2 combat infantry-type tasks, they observed that, for more simple  
3 tasks, having women in a team -- and it was usually -- they  
4 said "token woman" because there was a token woman on some of  
5 the teams -- the teams with token women tended to perform less  
6 well or more slowly at the simpler tasks; but at the more  
7 complex tasks, they may have slowed down some in their  
8 decision-making processes, but they performed better at those  
9 more complex tasks.

10 And what they -- the conclusions they drew is they  
11 actually watched -- they had, like, different-colored helmets  
12 on the team members. So they had the helmets coded. And they  
13 were able to see what the women said and how their inputs were  
14 enacted on by the team. And they also find the relationship  
15 was modified by leaders -- the leaders of those teams, the  
16 beliefs that those leaders had about the competency of women,  
17 which is pretty important too.

18 **Q.** Thank you.

19 We can take this down and put back up Defendant's  
20 Demonstrative Number 4.

21 I want to turn now to your last opinion. Could you please  
22 read for the Court your last opinion that you're offering  
23 today.

24 **A.** Yes. It is that the Department of Defense has  
25 consistently concluded that a diverse and inclusive military is

1 critical to mission success.

2 Q. Thank you.

3 You can take that down.

4 Why do you say that the Department of Defense has  
5 consistently concluded that a diverse and inclusive military is  
6 critical to mission success and a national security imperative?

7 A. I look back in history -- and I know Mr. Vazirani raised  
8 the Truman executive orders that integrated the military in  
9 1948. You know, and as far back as that, there have been  
10 examples of the Department of Defense taking steps to integrate  
11 and to build a more diverse and inclusive organization through  
12 the committees of the '50s and '60s to the founding of what was  
13 the Defense Race Relations Institute in 1971 through the  
14 Military Leadership Diversity Commission, and then, more  
15 recently, the 2020 Diversity Inclusion Board immediate actions  
16 and the existence of my team. And I point to as well the 2022  
17 national defense strategy, which repeats that mandate.

18 Q. Okay. I want to ask you some questions about some of  
19 those examples you just gave. I think you mentioned the  
20 Military Leadership Diversity Commission. What was that?

21 A. That was directed -- Congress directed that the military  
22 stand up a team on -- I believe the team was -- was current and  
23 retired prior officers -- general officers and noncommissioned  
24 officers -- to study the lack of diversity in the officer ranks  
25 and to come up with recommendations about what the department

1 can do about it because Congress recognized this as a problem.

2 Q. Did the commission issue a report?

3 A. Yes. In 2011 they published a report with a range of  
4 recommendations.

5 Q. Okay. We have that if we could take a look. Defense  
6 Exhibit 46.

7 Is this that report?

8 A. Yes, it is.

9 Q. If we could turn to page 13 of the report.

10 Does this page of the report reflect a summary of the  
11 commission's work?

12 A. It summarizes part of it, yes.

13 Q. If we could take a look just at the second paragraph there  
14 where it says the commission's recommendation to support two  
15 overriding and related objectives.

16 Could you read the second of those two objectives, please.

17 A. Number 2, "That the services pursue a broader approach to  
18 diversity that includes the range of backgrounds, skill sets,  
19 and personal attributes that are necessary to enhancing  
20 military performance."

21 Q. And I'm sorry. We can go back and read the first one too.

22 What's the first one?

23 A. 1, "That the armed forces systematically develop a  
24 demographically diverse leadership that reflects the public it  
25 serves and the forces it leads."

1 Q. Thank you.

2 And if we could turn to page 30 of this report by the  
3 commission. What does this page show at the bottom of the  
4 page?

5 A. It shows the three interrelated goals that the commission  
6 identified as following with its recommendations.

7 Q. And could you read the second of those three goals there.

8 A. "Develop future leaders who represent the face of America  
9 and are able to effectively lead a diverse workforce to  
10 maximize mission effectiveness."

11 Q. Did this report make any findings about the racial and  
12 ethnic diversity of the officer corps?

13 A. And I'm going from memory right now. It's been a little  
14 bit of time since I've viewed it.

15 But yes, I believe it did, that the officer corps needed  
16 to be more diverse to represent -- to more accurately -- or to  
17 more closely reflect the people that they lead.

18 Q. Okay. We can take a look at it. It's page 66, I think,  
19 of this report. And I think this is the part that you were  
20 referencing.

21 Could you read that into the record, please?

22 A. Yes. The whole paragraph?

23 Q. Yes, please.

24 A. "Given the desire to develop and maintain a military  
25 leadership that is demographically representative of the

1 American public, it follows that military leadership should  
2 also represent the service members it is entrusted to lead.  
3 Leaders from racial, ethnic, and cultural backgrounds similar  
4 to those of the U.S. citizenry have the potential to inspire  
5 future service members and engender trust among the population.

6 "Demographic similarities between the enlisted corps and  
7 its leaders can equally inspire and facilitate greater  
8 confidence. Also, given the fact that American demography is  
9 rapidly changing, it is important to design future policies  
10 that will shape personnel trends in desired ways.

11 "Advancing understanding of how the military personnel  
12 life cycle both promotes and impedes members of  
13 underrepresented demographic groups from achieving leadership  
14 positions is a critical first step."

15 **Q.** Thank you.

16 We can take down this exhibit.

17 So I think in your prior answer you mentioned some more  
18 recent efforts the department has taken on diversity and  
19 inclusion. I think you mentioned a 2020 board report. Do you  
20 know who directed the issuance or creation of that board?

21 **A.** Yes. That was former Secretary of Defense Esper.

22 **Q.** Okay. And if we could put up Defense Exhibit 177.

23 We've seen this document a couple times already in this  
24 trial. We saw it earlier this morning with Mr. Vazirani. So I  
25 won't belabor it.

1 But can you just describe for the Court broadly what this  
2 memo directed and what it established.

3 A. Yes. This memo directed three different actions for the  
4 department to take to ensure that it could improve diversity  
5 and inclusion in the Department of Defense. And those actions  
6 were the establishment -- or first, the setting out of a number  
7 of immediate actions in diversity and inclusion from the  
8 secretary himself.

9 Second was the establishment of a Defense Advisory  
10 Committee on Diversity and Inclusion, the DACODAI.

11 And the third is the establishment of the DoD D&I board,  
12 the diversity and inclusion board, that met for the next, I  
13 believe, six months.

14 Q. Okay. And could we take a look at Plaintiff's Exhibit 210  
15 now. So we have also seen this document before in this case.  
16 I think we went through it with General Walker when he was  
17 testifying.

18 But do you recognize this document?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is the diversity and inclusion board report that was  
22 released in late 2020.

23 Q. And this was done in response to Secretary Esper's memo;  
24 is that right?

25 A. That is correct.

1 Q. Do you know who was on the board that produced this  
2 report?

3 A. Yes. It was a range of members from, I believe, all of  
4 the different services and different ranks.

5 Q. And, again, since we went through it already at least  
6 once, I won't go through it again. But just broadly speaking,  
7 what did the board do and what did they conclude?

8 A. The board met and reviewed inputs from across the  
9 department and broadly determined that, despite the work that  
10 the department has done over the last decades, it still has  
11 more work to do; that the department is not as diverse or  
12 inclusive as it could be. And it set out a range of 15  
13 recommendations in this space to continue driving forward.

14 Q. And from the date of this report until you left the  
15 department in July of this year, did it continue to be the  
16 position of the Department of Defense that a diverse and  
17 inclusive officer corps was a national security imperative?

18 A. Yes, it is. It was.

19 MR. ROBINSON: Thank you. I have no further  
20 questions.

21 THE COURT: Thank you, Mr. Robinson.

22 Mr. Mortara.

23 MR. MORTARA: Just a moment, Your Honor, if that's  
24 okay.

25 THE COURT: Take your time.



**CROSS EXAMINATION**

**BY MR. MORTARA:**

**Q.** Hi, Dr. Haynie.

**A.** Hello.

**Q.** We met this morning, didn't we?

**A.** We did.

**Q.** How are you?

**A.** I don't know that I'd recommend this to all of my friends.

**Q.** Well, I've never flown a helicopter with night vision

goggles on; so we both have different experiences.

Different experiences can help make better decisions?

**A.** Yes.

**Q.** Great. My friend Mr. Robinson, who I will say on the record is my favorite lawyer from the Department of Justice --

**THE COURT:** So that covers a lot of territory, Mr. Mortara.

**MR. MORTARA:** I tell them this every day.

**THE COURT:** We're laughing. It may come to haunt you when you deal with other lawyers in the Department of Justice.

(Laughter.)

**MR. MORTARA:** I just -- I wanted it to be on the record.

**THE COURT:** That's all right.

**BY MR. MORTARA:**

**Q.** He mentioned General Walker to you. You know General

1 Walker pretty well, don't you?

2 A. I know him from serving with him, yes.

3 Q. And despite what might be your disagreements about some of  
4 the subject matters in this case, you respect General Walker,  
5 don't you?

6 A. Yes. I mean, I don't think I've worked with too many  
7 people who I don't respect.

8 Q. Wow. Very lucky.

9 You're being paid today?

10 A. I am.

11 Q. I notice you didn't mention that. Did you not mention  
12 that on your direct testimony? I didn't hear it.

13 A. I don't think we covered that.

14 THE COURT: I don't think she was asked.

15 BY MR. MORTARA:

16 Q. Oh. So how much are you being paid?

17 A. I'm being paid 420 an hour.

18 Q. And when did you start getting paid by the Department of  
19 Justice?

20 A. The first week of August, I believe.

21 Q. Okay. Now, we all know that the Army, Air Force, Marines,  
22 and Navy are all part of the Department of Defense, but can you  
23 just agree with me on that for the record?

24 A. Yes. The Army, Navy, Air Force, and Marines are part of  
25 the Department of Defense.

1 Q. Sometimes we have to do pedantic things.

2 And all of the opinions you expressed in your report and  
3 direct testimony today are similarly applicable to the Army,  
4 Air Force, Marines, and Navy, correct?

5 A. When I talk about these issues, I talk about them from a  
6 Department of Defense kind of oversight perspective; so  
7 thinking about security organizations, military organizations  
8 around the world.

9 Q. And all the opinions you express today are equally  
10 applicable to the four services, correct?

11 A. I don't know that I'd say all are equal. I haven't  
12 examined every one of them to consider them in different ways.

13 Q. Excuse me. I've just got to get your deposition. It was  
14 so short I almost didn't find it.

15 Could you turn to page 168.

16 A. Oh, there it is. I'll do that.

17 Q. And at line 12 you were asked by my friend Mr. McCarthy,  
18 "So all four opinions you expressed in your report, are they  
19 similarly applicable to the United States Army and the United  
20 States Navy?"

21 And you answered "Yes," and then volunteered, "I would  
22 also include the Air Force and Marine Corps organizations with  
23 that security mission."

24 Was that your sworn testimony just a little while ago?

25 A. Yes. And I apologize. I thought you were talking about

1 specific aspects of the research, like, for example,  
2 peacekeeping operations and things like that.

3 Q. There's absolutely no need to apologize, Dr. Haynie.

4 A. Yes. No, that is a correct statement what I said in  
5 there.

6 Q. When you were at DoD, your job was to advise the Office of  
7 the Undersecretary of Personnel and Readiness on matters  
8 related to diversity and inclusion, correct?

9 A. That is correct.

10 Q. And part of your job at DoD was to stay abreast of  
11 research and evidence in the area of diversity and inclusion,  
12 particularly as it pertains to the military, correct?

13 A. That's correct.

14 Q. And the DoD has a position in this case overall, which is  
15 that race should be used in admissions at the Naval Academy.

16 You understand that, right?

17 A. I understand that, yes.

18 Q. But you also have been a scholar, correct?

19 A. Yes.

20 Q. When you write scholarship, do you make an effort to  
21 present both sides of an argument along with the ideas and  
22 evidence that do not support your central claims so that your  
23 audience can get a complete picture?

24 A. That's generally the framework. There are some platforms  
25 where you're encouraged to use different framing. But as a

1 scholar you want to take in the information wherever you can to  
2 help understand the broad picture.

3 Q. Did you try to do that today in your direct testimony?

4 A. Yes.

5 Q. Do you know what confirmation bias is?

6 A. Yes.

7 Q. What is it?

8 A. It is when you have a set of beliefs and you seek out  
9 research that confirms those beliefs.

10 Q. You have had the view that racial diversity in the  
11 military, particularly the officer corps, contributes to  
12 operational effectiveness for quite some time, correct?

13 A. Around diversity more broadly.

14 Q. But also including racial diversity?

15 A. Different forms of diversity, that diversity in general  
16 and inclusive organizations around that diversity support  
17 military effectiveness, yes.

18 Q. And I'm showing on the screen Defense Exhibit 194, which  
19 is your expert disclosure in this case. Going to the fifth  
20 page. And I want to put up on the screen one of your  
21 opinions -- you cite Professor Lyall first.

22 You've mentioned him on your direct, correct?

23 A. That is correct.

24 Q. And then you say, "RAND and outside research identifies  
25 how more diverse organizations, including military and law

1 enforcement, directly impact operational effectiveness because  
2 such organizations" -- and there's a quote -- "are more  
3 effective at accomplishing their missions."

4 That's from your report, right?

5 A. Yes.

6 Q. And then you have a footnote with some sources down there.  
7 It's Footnote 8.

8 Do you see that?

9 A. I do, yes.

10 Q. And the first article is from Butler and Denton of RAND  
11 Corporation.

12 Do you see that?

13 A. I do.

14 Q. Are you friends with Dwayne Butler and Sarah Denton?

15 A. I know who both of them are.

16 Q. You worked with them at RAND?

17 A. I don't believe we worked on any projects directly  
18 together, but you get to know people working in the national  
19 security space there.

20 Q. I'll put up on the other side Plaintiff's Exhibit 824 and  
21 just ask you to confirm if that is the Butler and Denton piece  
22 that you cited.

23 A. It is.

24 Q. And then page 4. I think I found the part that you  
25 quoted. It's efficacy of blinding strategies to increase

1 representation and inclusion in the ranks and in leadership.  
2 Then it says, "The DAF has a goal of improving gender, racial,  
3 and ethnic diversity at all levels so that the organization  
4 reflects a diversity of the general population."

5 Do you see that?

6 A. I do.

7 Q. It says, "Research shows that more diverse military and  
8 law enforcement organizations have greater trust within both  
9 those who serve in those organizations and the people those  
10 organizations serve and draw from for members and are more  
11 effective at accomplishing their missions."

12 Do you see that?

13 A. I do.

14 Q. That's the part that you quoted in your expert report we  
15 just looked at, right?

16 A. That is correct.

17 Q. And then that statement has no citation, correct?

18 A. The research shows statement?

19 Q. Yeah. "The research shows," and then there's a period.  
20 And then there's no authority cited there, correct?

21 A. So with something like this, I've seen citations done  
22 different ways. So you look down and you can see Dr. Lyall  
23 cited. My first assessment for something like this would be  
24 going back to that source to see if perhaps that was the  
25 citation for both sentences. If not, I would then go look

1 broadly to see what else they had potentially brought in to  
2 cite there.

3 Q. So it could be Professor Lyall?

4 A. It could be that they were drawing some of those  
5 conclusions with his work. It could be.

6 Q. And that's -- you had already cited Professor Lyall in  
7 your report before that, right?

8 A. Yes.

9 But unfortunately I don't have it in front of me. One of  
10 the --

11 Q. I can give it to you. That's no problem.

12 A. No, no, no. I was thinking about something else. I'm  
13 sorry.

14 Q. Go ahead.

15 A. In my role at DoD we worked on a range of research  
16 products for internal consumption for leaders, and I came  
17 across studies regarding security forces and police forces that  
18 also spoke to that point.

19 Q. And the next in your footnote from your report, sticking  
20 with your report, is Fleming 2023, which is Defense Exhibit 7,  
21 D170.

22 I think you talked about this one on direct.

23 A. I did.

24 Q. That's not an article or study about racial diversity. I  
25 think you mentioned that to my friend Mr. Robinson, right?



1 A. That is correct.

2 Q. And the next one in this list is the RAND study by  
3 Slapakova. Do you know --

4 A. I don't know her personally. So your guess is as good as  
5 mine.

6 Q. You mentioned that one on direct too, right?

7 A. Yes, I did.

8 Q. That is, for the record, Plaintiff's Exhibit 957 -- or  
9 excuse me -- 597. And I think Mr. Robinson showed you this  
10 section on page 19 that begins "Supported by a growing body of  
11 literature on diversity and inclusion."

12 Do you see that?

13 A. I do.

14 Q. And then there's a footnote with some various sources,  
15 right? And those would be the footnotes that Ms. Slapakova was  
16 citing to support that proposition, correct?

17 A. As an example.

18 Q. Yes. That's what e.g. means.

19 A. Right.

20 Q. That's one thing where what you do and what we do is the  
21 same. We all use the "see e.g."

22 A. I can never remember the difference between that and i.e.  
23 To be honest, I struggle.

24 Q. We call it Bluebooking, and it's a whole different thing,  
25 and I was never very good at it. So thank you. We're going to

1 come back to that one. So put that to one side.

2 Then the last cite here is by a gentleman -- I don't know  
3 if you know him; so I don't know how to pronounce his name, but  
4 you might -- Egnell?

5 A. Egnell, Robert Egnell.

6 Q. Do you know him?

7 A. I've met him once or twice.

8 Q. And that article is entitled "Gender Perspectives and  
9 Military Effectiveness: Implementing UNSCR 1325 and the  
10 National Action Plan for Women, Peace, and Security."

11 That's got nothing to do with racial diversity, either,  
12 does it?

13 A. I would disagree with that statement.

14 Q. Okay. What does it have to do with racial diversity?

15 A. So a couple things. One, the Women, Peace, and Security  
16 agenda is moving more intersectional. So as I mentioned  
17 earlier, we all have different characteristics. So we all kind  
18 of live at an intersection of all kinds of different  
19 attributes.

20 My understanding of WPS is that started off fairly  
21 broadly -- or directly focused on women, women of all kinds of  
22 backgrounds, to include different races and ethnicity, but  
23 women. It has in some ways broadened into talk to expand to  
24 different attributes and how people, particularly from  
25 different groups that don't have access to power or don't have

1 access to the same rights and resources that others may, could  
2 be impacted by war.

3 And this kind of gets to the point that I was making  
4 earlier is this is -- the social science research is not an  
5 exact science, right. So people and war are complex phenomena.  
6 I'm going to mess that up. Apologies.

7 And so to really understand them, if we don't have, you  
8 know, an omniscient view, which none of us do, we need to kind  
9 of paint this picture. And so I view the gender work that's  
10 cited here as instructive because it can explain to us how  
11 different perspectives and experiences, when included in  
12 warfighting and operational decision-making, can be valuable.

13 Q. So put aside the instructional value of it. You'd agree  
14 that the focus of it is not racial diversity?

15 A. I'd say the top focus of it is the racial diversity; it's  
16 gender.

17 Q. Dr. Haynie, what is the Naval Postgraduate School?

18 A. I'm not going to use the right words for this. So  
19 apologies. It is one of the professional military institutions  
20 of the Department of Defense. It's the Navy's preeminent  
21 institution.

22 Q. It's part of the Navy, which is part of the defense  
23 department; is that right?

24 A. That is correct.

25 Q. Have you ever been there?

1 A. Yes, I have been twice, I think.

2 Q. You said in your direct testimony that one of the first  
3 things you did in this case was conduct a literature review.

4 Remember that?

5 A. Yes.

6 Q. I want to show you a paper from the Naval Postgraduate  
7 School from this year. And I'll give you a copy. This is  
8 Plaintiff's Exhibit 800. It's a publication from the Naval  
9 Postgraduate School and researchers there.

10 MR. MORTARA: For the record, Your Honor, it is dated  
11 March of 2024.

12 BY MR. MORTARA:

13 Q. Do you see that right there?

14 A. Are you asking me?

15 Q. Yes. Sorry.

16 A. Yes, I do.

17 THE COURT: This is Plaintiff's Exhibit Number what  
18 again? I'm sorry.

19 MR. MORTARA: 800, marked for identification purposes  
20 for now, Your Honor.

21 THE COURT: Thank you.

22 BY MR. MORTARA:

23 Q. And the title of this article is "Assessing the  
24 Relationship Between Diversity and Navy Unit Performance."

25 Let's pause here for a second.

1 Just from the title, you might think this is highly  
2 relevant to your opinions in this case, right?

3 A. Yes.

4 Q. Did this come up in your literature review?

5 A. No, it did not. I'm fascinated too.

6 Q. You're telling me you've never seen this before?

7 A. I have not. And I would say the bulk of my literature  
8 review was done earlier and completed sometime in March or  
9 April. So I didn't get this one, and I'm curious.

10 Q. I thought you said you were retained in July. Did I get  
11 that wrong?

12 A. My initial declaration and work on this in my DoD role  
13 started before I left the Department of Defense.

14 Q. You've been involved in this case almost -- well, shortly  
15 after it got filed, right, you did a declaration at the  
16 preliminary injunction phase, I think?

17 A. I did do a declaration for the injunction phase, but I'm  
18 sorry; I don't know when it actually got filed, like, when the  
19 case got filed.

20 Q. And you also did one in connection with our suit against  
21 West Point, correct?

22 A. Yes.

23 Q. You spent -- you've had a lot of meetings with the  
24 lawyers, correct?

25 A. Yes.

1 Q. I think you told us at your deposition it was five times  
2 or more before your deposition, right?

3 A. I'll go with that. I can't remember what I told at the  
4 deposition; but yes, there have been quite a few.

5 Q. You've spent a lot of time with the lawyers, right?

6 A. Yes.

7 Q. You even signed some documents beyond your declaration for  
8 this case, right?

9 A. Yes, I did. Some of the interrogatives, I believe.

10 Q. Yes. I'm going to put up on the screen Plaintiff's  
11 Exhibit 2939, which are defendants' responses to some of our  
12 interrogatories.

13 You actually signed these on behalf of the defense  
14 department, didn't you?

15 A. Yes, I did.

16 Q. We asked the defense department to identify articles that  
17 were related to these issues. And right here on the document,  
18 the interrogatory response you signed, you can see this  
19 "Assessing the Relationship between Diversity, Inclusion, and  
20 Navy Unit Performance," Naval Postgraduate School article I  
21 just showed you, right?

22 A. Yes.

23 Q. We're going to take a look at this article to see what it  
24 says. But, first, I want to look at the names of the article's  
25 authors.

1 You can see that on page romanette iii of Plaintiff's  
2 Exhibit 800. This report was prepared by -- and this is -- I  
3 gather it's a form that needs to be filled out for everything  
4 that's a report of the government. But it says it's prepared  
5 by Erik Helzer, associate professor; Paul Lester, associate  
6 professor; and Simona Tick, senior lecturer.

7 Do you see that?

8 A. I do.

9 Q. Do you know these people?

10 A. I don't, no.

11 Q. Starting on page 3 of the actual article, which is quite a  
12 bit further because there's, I think, some DoD-related forms  
13 you have to get through, they start to discuss a literature  
14 review.

15 Do you see that?

16 A. I do.

17 Q. And then on page 12 -- excuse me -- page 12, there's a  
18 subheading, "Navy DoD perspectives on research and research on  
19 diversity and performance."

20 Do you see that?

21 A. I do.

22 Q. And it says at the bottom in the portion that I've  
23 highlighted from March of 2024 -- that's this year -- "Despite  
24 recent focus by the Navy and other military branches on  
25 promoting healthy cultures to enable performance among an

1 increasingly diverse workforce, there exists little research on  
2 the relationship between diversity and military performance."

3 Do you see that?

4 A. I do.

5 Q. They did a literature search. And then it goes on. And  
6 it says, "As part of our literature review, our team reviewed  
7 2,482 technical reports available in DTIC published between  
8 January 2000 and September of 2023 that included the search  
9 terms "diversity," "performance," "manpower," and "talent." On  
10 our review, none of these reports" -- please bear with me --  
11 empirically examined the relationship between diversity and  
12 unit performance in any setting, let alone in operational  
13 context."

14 Do you see that?

15 A. Yes, I do.

16 Q. Oh, apparently I said 2003, not 2023. But the document  
17 reflects the correct statement.

18 MR. MORTARA: Sorry, Your Honor.

19 THE COURT: You're quoting from the opinion expressed  
20 in the paper, and the date was March of 2023 or 2024?

21 MR. MORTARA: 2024, Your Honor.

22 THE COURT: Okay. That's fine.

23 MR. MORTARA: Thank you, Mr. Strawbridge. I  
24 appreciate that.

25 BY MR. MORTARA:



1 Q. And according to these authors, this was the Navy DoD  
2 perspective, but obviously they explain what they mean.  
3 They're just searching the literature, right?

4 A. When they conduct a literature review like that, yes, they  
5 examined a specific database, I believe. What page was that,  
6 the last one?

7 Q. It's 12. They said the DTIC as a database.

8 A. Okay. There it is at the bottom.

9 They said they searched the DTIC database, which is  
10 specific -- actually, I think -- I'm not 100 percent sure, but  
11 I believe it's specific just to military institutions.

12 Q. And we're going to have a lot of time on this one; so  
13 there will be plenty of time for you to dive in because we're  
14 going to go through it. But I want to skip to the conclusions  
15 first, which is on page 34.

16 There's Research Question 1. "What is the empirical  
17 relationship between Navy unit diversity and unit performance?"

18 This is really interesting to you, isn't it?

19 A. Yes. I mean, everything in this topic tends to be.

20 Q. And their first conclusion from the study that they did  
21 with the fascinating title from the interrogatory response is,  
22 "Overall, our data do not support a one-size-fits-all  
23 conclusion about the empirical relationship between Navy unit  
24 diversity and unit performance."

25 Do you see that?

1 A. I do.

2 Q. It goes on to say, "Across all diversity and performance  
3 indicators examined, there was nonuniformity in the  
4 relationships observed, and none of the diversity indicators  
5 was consistently and reliably associated with both indicators  
6 of performance."

7 Do you see that?

8 A. I do.

9 Q. And then down below it's saying, "This is consistent with  
10 other results in the literature" -- and the part I want to  
11 focus on -- "which indicate that the effect of diversity for  
12 organizations depend heavily on context."

13 Do you see that?

14 A. I do.

15 Q. Do you agree with that, by the way, that the effect of  
16 diversity on organizations depends heavily on context?

17 A. Yes, without having reviewed the whole rest of it right  
18 now, I definitely -- I mean, context is a key part of  
19 everything we've talked about.

20 I also think there's an inclusion aspect in here that I  
21 have not seen on this section yet where bringing in diversity  
22 is a piece of it, but ensuring you have an inclusive  
23 environment is also a big piece of it.

24 Q. Sure. To present all sides, I want to dive into this  
25 article with you and actually look at what they studied. It

1 sounds like you want to see it too.

2 So let's look at the abstract.

3 It says, "This study empirically assessed relationships  
4 between crew diversity and crew performance across six years of  
5 observation of the U.S. Navy's fleet of destroyer ships, DDGs."

6 Do you see that?

7 A. I do.

8 Q. And then it goes on to say, "Across all diversity and  
9 performance indicators examined" -- this is what we just saw in  
10 the conclusions -- "there was nonuniformity, and none of the  
11 indicators was consistently and reliably associated with --  
12 none of the diversity indicators was consistently and reliably  
13 associated with both indicators of performance."

14 Then there's something here that we're going to dive into.  
15 "We observed small but significant statistical relationships  
16 between crew performance and indicators of gender, racial, and  
17 cultural diversity. Gender diversity was negatively associated  
18 with the likelihood of winning a Battle Efficiency Award,  
19 whereas racial and cultural diversity were positively  
20 associated with aggregated afloat training group evaluations of  
21 critical mission areas."

22 Do you see that?

23 A. I do.

24 Q. Let's look at first at the way they -- what the Battle e  
25 Award and afloat group training is.

1        So on the next page it says, "We examined two performance  
2 indicators for DDG crews." Those are destroyer crews. "First,  
3 we identified battle efficiency, Battle E, award winners in  
4 each year in the period of observation and compared the  
5 characteristics of crews selected for the prestigious Battle E  
6 award." It says, "the Battle Efficiency Award recognizes  
7 sustained superior performance in an operational environment."

8        Have you heard of that award before?

9        A.    I have.

10       Q.    Is it prestigious?

11       A.    So I've heard about it in that I started off in the Navy  
12 for four years, but I could not tell you more besides that I'd  
13 heard about it.

14       Q.    And then the second thing that they focused on -- oh, let  
15 me get to the last part here.

16       "During our period of observation, the Battle E award was  
17 bestowed only upon 14.11 percent of destroyer groups, thus ship  
18 crews with Battle E awards can reasonably be considered  
19 high-performing units using the Navy's stated criteria."

20       Do you see that?

21       A.    I do.

22       Q.    And then they say they looked at annual assessments of  
23 crew readiness conducted by the afloat training group, ATG.

24       Have you heard of that before?

25       A.    I have not.

1 Q. So this is, I gather, an assessment of crew readiness  
2 conducted by the Navy. And then it explains what those are.

3 So let's look at now what they measured on crew diversity,  
4 page 16, Table 1.

5 Just give you an opportunity to look at the diversity  
6 indicators they had.

7 You can see that they -- for gender, they were using  
8 percent female sailors. And then for racial, they used percent  
9 non-White sailors. So that would go up as percentage of White  
10 sailors went down.

11 Have you ever heard of the racial generalized variance?

12 A. That is a term that I am not familiar with.

13 Q. They also used that at one point in their analysis. We'll  
14 stop there when it comes.

15 Now, a sailor with a capital S here in the Navy is anyone  
16 who wears the uniform, including officers, right?

17 A. Again, my time in the Navy was a little while back. I  
18 believe that would, but please don't quote me on it.

19 Q. Well, there's places in the article, including here on  
20 page 7, that draw the distinction between sailors generally and  
21 enlisted sailors. But at any point, if you think it's not the  
22 right group, you just let me know.

23 In all events, the Table 1 that we were just looking at  
24 said "percent of non-White sailors." So this is not officers  
25 that are being discussed just exclusively, right?

1 A. No, this is enlisted sailors, it says. Well, let me read  
2 it. I can't read and talk at the same --

3 Q. I think it's actually everybody on the ship. But my point  
4 is it's not just officer racial diversity that's being  
5 discussed here.

6 A. No, it's not.

7 Q. You would never use the word "sailor" to refer to only  
8 officers?

9 A. I mean, I can't say never. I don't do, honestly, any kind  
10 of writing for the Navy like that. But I am not familiar with  
11 seeing the word "sailors" used to just refer to officers unless  
12 it's in a very specific context.

13 Q. Right.

14 And over here at page 21 it says, "Crew diversity  
15 indicators were computed for each ship year using quarterly  
16 snapshots of crew records for demographic characteristics,  
17 including gender, race, age, country of birth, education, and  
18 marital status."

19 I want to stop here.

20 You're aware that the Navy keeps track of the -- these  
21 diversity indicators, demographic data about everybody on every  
22 ship all the time? Is that right, or is that not right?

23 A. I don't have familiarity with how the Navy tracks its  
24 data. That was not one of my roles.

25 Q. So if the Navy does have all that data, it's not that hard

1 for the Navy or the Army or the other services to conduct  
2 studies like this one to compare how units perform on various  
3 readiness measures on the basis of race or sex or anything  
4 else, is it?

5 A. I can't say that one way or the other because I'm not  
6 familiar with how accessible the data. I know enough to say  
7 that the different databases and datasets at DoD do not talk  
8 well to each other and that that is a real problem for people  
9 management.

10 But I would also add that I would like to better  
11 understand what the Battle E Award is and what goes into these.  
12 You know, there are training opportunities that could be used  
13 to study, like the Fahr, et al. study that was done in  
14 training, and then there are real operations. And sometimes  
15 you can get training out of real operations, but the risks are  
16 greater.

17 And when I spoke about kind of the ethical concerns, there  
18 are also, I think, in my mind, more research benefits of  
19 studying something in real life versus training. But I don't  
20 know enough about what goes into the Battle E. So that would  
21 be one of the questions I have.

22 Q. So I'm going to now get to their results. Those are shown  
23 in Table 7 partially on page 18, and there's a table. I just  
24 want to talk to you about the table because you see Battle E  
25 winner, MA evaluation index? You see all that on Table 7?

1 A. I do.

2 Q. And Table 7 reports pair-wise correlations in the data.  
3 Now, you've taught quantitative methods at the graduate level  
4 and you know the difference between correlation and causation,  
5 right?

6 A. I do.

7 Q. You need to have controls in your analysis to try to  
8 establish a causal link, right?

9 A. That is correct.

10 Q. And here they have identified correlations in bold that  
11 they say were significant in full regression analysis with  
12 controls for ship-year, crew experience, and crew aptitude.

13 Do you see that?

14 A. I do.

15 Q. For the Battle E winner there's bolding around percent  
16 female, and for the MA evaluation index in one of the samples,  
17 N equals 315, that's for the race-generalized variance we  
18 mentioned before and percent non-U.S.-born but not percent  
19 non-White. That was not significant, apparently.

20 Do you see that?

21 A. Yes. Sorry. Go a little slower because I'm trying to  
22 read all the pieces.

23 Q. Sure. Sorry. Please take your time.

24 Now, there's this difference between the N equals 315 and  
25 the N equals 220 on the MA evaluation index.



1 Do you see that?

2 A. Yes.

3 Q. There's two columns. I thought you might want to know  
4 what that's all about. The previous page says, "When we looked  
5 only at the 220 ship-year observations for which the MA  
6 evaluation index was based on three or more evaluations in a  
7 ship-year, correlations changed in magnitude and occasionally  
8 direction, and none was statistically significant." So that is  
9 a smaller portion of the data where they had three or more  
10 evaluations in a ship-year.

11 Now, I want to talk first about the gender findings and  
12 the Battle E award, but I want to respect your intersectional  
13 testimony, which is to say I don't want to spend a lot of time  
14 on this because this case is about race. But you've said it  
15 was all kind of together, intersectional; so I want to spend a  
16 little bit of time on the gender stuff, if that's okay.

17 Here's the results of the gender regression. And it says,  
18 "The negative beta for percent female indicated that, after  
19 controlling for crew experience and aptitude, crews with higher  
20 percentage of female sailors were less likely to be awarded a  
21 Battle E."

22 And you see that P value of .022, right?

23 A. Yes.

24 Q. And traditionally in social science, a result is  
25 considered statistically significant if the P value is less

1 than .05, right?

2 A. Generally, yes.

3 Q. Would you agree or disagree that this finding challenges  
4 some of your assumptions about the universal performance value  
5 of gender diversity in the military?

6 A. So --

7 Q. Or that it might. How about that?

8 A. No, I wouldn't agree with that. I think it's an  
9 interesting study, and I wish I had seen it just to learn more.  
10 But this is all part to me of coloring in that broader picture.

11 If you look at the Fahr, et al. study from 2020 that I  
12 cited earlier, the findings in that study were that women --  
13 having a token woman on the team -- woman on the team slowed  
14 down the decision-making process. This is for more simple  
15 tasks. And, therefore, the teams performed slightly worse at  
16 more simple tasks.

17 But at more complex ones, that female voice enactment in  
18 those teams, while -- and I don't remember if, in the more  
19 complex task, they actually slowed it down or if that was just  
20 kind of the general trend, it improved the decision-making  
21 processes and injected real information.

22 So I -- part of me wonders is that at play? How many  
23 women were on the ship? What were the tasks involved in the  
24 Battle E award? What did that look like? And I'm absolutely  
25 unfamiliar with the other two columns, what that -- I can't

1 remember what it was.

2 Q. The beta or generalized variance --

3 A. No, no. Can we go back to --

4 Q. Table 7?

5 A. The MA evaluation index.

6 So those are the questions I would have. And I would say,  
7 as I mentioned earlier, this is social science around complex  
8 topics. I do not expect or anticipate that every relationship  
9 will play out the same way in every scenario. That would  
10 actually scare me if it did because of confirmation bias, as  
11 you mentioned.

12 What I like to look as a researcher to understand  
13 something like this is where the preponderance of research is  
14 taking me. What does the preponderance of research take us?  
15 This, I'm fascinated by. I want to read it. I want to  
16 understand it. And I want to understand what that teaches us  
17 digging into the specifics of the research design and how it  
18 was enacted.

19 Q. And, Dr. Haynie, I'll stop here and ask you a question.

20 You expressed several times that you would have been  
21 really interested in seeing this as you prepared your opinions  
22 in this case. No one from the Department of Justice showed you  
23 this article?

24 A. I mean, there were hundreds of studies flying around. So  
25 it -- to my knowledge, I didn't come across it. But I -- there

1 were also -- and it's funny. I look at the name, "Assessing  
2 the Relationship Between Diversity and Navy Unit Performance,"  
3 that is a name that I certainly would have been interested in.

4 But if I go back to that list, you know, I am certain that  
5 I could pull different studies off that teach me different  
6 things. And, again, I want to understand the study themselves,  
7 each study itself. But I want to step back and look at that in  
8 the whole of the context of the literature and what it teaches  
9 as well.

10 Q. This one is pretty fascinating because it's at least about  
11 the U.S. military, and it uses proxies for operational  
12 performance -- at least uses things that the military thinks --  
13 or the Navy thinks are relevant to readiness, right? So it's  
14 pretty exciting?

15 A. Yeah. That's why I thought the Fahr, et al. study was  
16 pretty good too. Same.

17 Q. I want to go to the race results now.

18 There's two tables, 9 and 10. 10 is about the  
19 race-generalized variance, which you said you weren't familiar  
20 with. So it's a little bit hard for me to ask you to comment  
21 on.

22 But I'll point out that Number 9, which is the percent  
23 non-White in the regressions, that was found to be  
24 nonsignificant with a P value of .293.

25 Do you see that?

1 A. I do.

2 Q. And then down below this is just the race-generalized  
3 variance. The P value was actually .064.

4 Do you see that?

5 A. I do.

6 Q. Now, that's above the .05 threshold, but I think the  
7 authors cover themselves a little bit here with this phrase.  
8 Can you explain what social science researchers mean by  
9 "marginally significant"?

10 A. Yes. I will use plain language on this, honestly, because  
11 that's the best I can do at this point. It's been a couple  
12 years since I've taught.

13 But, generally, social science research, you can find .05  
14 P values as statistically significant, but I've seen them vary  
15 from .01 to .001 to .10. And so when they say something is  
16 marginally significant, it means that the relationship or not  
17 in the regression is close enough within a given range to be  
18 considered noteworthy to call out.

19 So it doesn't hit the P less than .05 value, but it raises  
20 an attention to it.

21 Q. We're going to leave that for just now. I'm sure  
22 Mr. Robinson will have some questions about it too, and maybe  
23 I'll have some questions to come back. But we're going to  
24 leave P800 for now if that's okay.

25 Who is Nelson Lim?

1 A. Nelson Lim is a researcher at the RAND Corporation. I  
2 believe he runs the -- actually, I don't know if he still runs  
3 it. He was running a project Air Force portfolio. And he  
4 is -- I don't know the formal title, but I believe he has a  
5 leadership role in the Defense Advisory Committee on Diversity  
6 and Inclusion.

7 Q. You're friends with Nelson Lim?

8 A. I would call him a work colleague, someone I've met up  
9 with a few times, yes, someone I've met at RAND.

10 Q. You've actually coauthored articles with Nelson Lim,  
11 haven't you?

12 A. If by coauthored you're talking about the human resources  
13 study for the Air Force, the human resource programming, he was  
14 the project Air Force research lead; so he pulls in basically  
15 all of the research from project Air Force in human  
16 resources -- I believe it's -- it might be PTH. I can't  
17 remember what the title is now, but it's certain areas of  
18 research.

19 So when you work on something with the research director  
20 of a portfolio at RAND, oftentimes they will serve as either a  
21 reviewer or someone who puts some injects into the study  
22 somewhere.

23 Q. I've got on the screen a portion of your curriculum vitae  
24 from Defense Exhibit 194.

25 Are these the two articles that you were just referring

1 to?

2 A. Yes.

3 Q. You'd agree that Nelson Lim is a highly credentialed RAND  
4 researcher, wouldn't you?

5 A. Yes.

6 Q. And he's even a member of the Defense Advisory Committee  
7 on Diversity and Inclusion, correct?

8 A. Yes.

9 Q. You actually very briefly showed on the screen one of  
10 Nelson Lim's articles during your direct testimony when  
11 Mr. Robinson was going through a series of articles that you  
12 relied on for your opinions in this case.

13 Do you remember?

14 A. Yes.

15 Q. And this is it. This is Defense Exhibit 171 from RAND  
16 project Air Force. And you put the title briefly on the  
17 screen, "Improving Demographic Diversity in the U.S. Air Force  
18 Officer Corps," right?

19 A. Yes. That is correct.

20 Q. And you're familiar with this article because you relied  
21 on it in this case, correct?

22 A. Yes.

23 Q. So we're going to spend maybe even more time with this  
24 article, because you actually have really digested it, than  
25 P800, which you haven't seen before today but it's on the big

1 interrogatory response or it didn't grab your eye or you didn't  
2 see it for your opinions.

3 But let's just go to page-- I have a copy here, by the  
4 way, if you need it. I sort of thought the Justice Department  
5 would have one for you. But you went so briefly through it, it  
6 wasn't there.

7 So do you need a copy?

8 A. As long as we can have it on here, I should be fine.

9 Q. Okay. Well, I need to get my computer working first,  
10 which is always -- the judge had an admonition about lawyers  
11 running their own computers. And do you know what it was? It  
12 was don't do it.

13 THE COURT: No, I said there was an age limit. Over a  
14 certain age, you shouldn't be working the computer.

15 MR. MORTARA: He then later called me old, which, when  
16 you put the two statements together --

17 THE COURT: A lighter moment here in court,  
18 Mr. Mortara. I've always found that anybody over the age of 45  
19 shouldn't get near computers in a courtroom. So it's when all  
20 the young lawyers step forward here. So...

21 MR. MORTARA: For the record, Your Honor, I'm 49 years  
22 old today.

23 THE COURT: I thought you were. That's why I said 45.  
24 I was very careful, if you noted.

25 MR. MORTARA: Thank you, Your Honor.



1 (Laughter.)

2 THE COURT: We're laughing here.

3 Go ahead. Continue.

4 BY MR. MORTARA:

5 Q. This great study by your former colleague Nelson Lim, he  
6 talks about the motivation for the study. And one of the  
7 things that he talks about in the second sentence of the  
8 motivation for this study is something that the Court has been  
9 very interested in.

10 As rank increases, the fraction of officers who are  
11 members of a racial/ethnic minority or who are women decreases.  
12 Do you see that?

13 A. I do.

14 Q. And you agree with that, right?

15 A. To my knowledge, yes, that is what the data showed today.

16 Q. And that's a problem, right?

17 A. I believe it is a problem.

18 Q. And it says, "This report investigates officer  
19 eligibility, accessions, retention, and promotions by race,  
20 ethnicity, and gender to identify factors that led to the  
21 current state of diversity among Air Force officers and to  
22 identify potential policy avenues for leaders who seek to  
23 improve diversity at the most senior levels of the military,"  
24 right?

25 A. That is what it says, yes.

1 Q. Now, if you go to potential factors shaping senior leader  
2 diversity on page 4, he goes through four factors. And he  
3 says, "The first factor is there may be a difference between  
4 the general population and the population eligible and willing  
5 to become military officers."

6 You testified about that on direct, didn't you?

7 A. Sorry. I'm at the spot with the glasses -- my glasses  
8 broke --

9 Q. Do you want me to zoom out a little bit? Is that better?

10 A. Yeah, that actually is a little bit better. I apologize.

11 Q. A little bit worse for me, but better for you. And  
12 you're --

13 A. Go ahead. Zoom it back --

14 Q. No, no. You are the star of the show. So please. It's  
15 the highlighting there.

16 A. Yes.

17 Q. You talked about propensity and eligibility, and he's  
18 talking about that here, right?

19 A. Yes. That is what he's saying, that there's a difference  
20 between the general population and the population eligible and  
21 willing to become military officers.

22 Q. Now, staying on task here with relevance, this is a case  
23 about the U.S. Naval Academy. Everyone who is admitted to the  
24 Naval Academy definitionally is eligible, right? You can't get  
25 in unless --

1 A. So, I mean, I would assume, but I am not -- I'm sorry.  
2 When I see you, it's blurry; so I'll keep looking over.

3 So -- but I'm not familiar with the admissions processes  
4 and how -- and if there are some brought in in different  
5 categories.

6 Q. I'm going to not spend a lot of time on eligibility. I'm  
7 sure Mr. Robinson can come back. But it's because -- well, I  
8 don't have to explain. I'm going to move on.

9 Sorry. I keep talking. I'm going to ask a question.

10 The second factor that he identifies is beyond  
11 eligibility, diversity in the Air Force begins with the  
12 accession of new officers.

13 Do you see that?

14 A. I do.

15 Q. And that's -- accession of new officers is a little bit  
16 about what this trial is about because we're talking about the  
17 Naval Academy. And when you graduate from the Naval Academy,  
18 except in some number of cases where you commission into the  
19 Marines, you commission into the United States Navy, correct?

20 A. Well, and some cross service into the Air Force and Army  
21 too, but yes.

22 Q. A very small number?

23 A. Yes, yes.

24 Q. The third factor he identifies is promotion and retention.

25 A. So individuals who are accessed into the Air Force face

1 promotion boards and retention decisions throughout the course  
2 of their careers. If some groups are selected for promotion at  
3 lower rates, their representation will decrease from one grade  
4 to the next.

5 Q. Do you see that?

6 A. Yes, I do.

7 Q. And you talked a lot about -- you talked about both  
8 recruiting and retention issues in your direct testimony,  
9 right?

10 A. Yes, I did.

11 Q. And there's a fourth factor he mentions, which is, if  
12 members of different career fields have different promotion and  
13 retention rates and racial and ethnic gender groups do not  
14 distribute themselves equally across career fields, then the  
15 diversity seen in higher ranks will also differ from the  
16 diversity seen at the accession point.

17 Do you see that?

18 A. I did a moment ago.

19 Q. Oh, I had to switch the page. I can --

20 A. Oh, I see it at the top.

21 Q. I can do magic. Watch this.

22 A. I got it.

23 Q. I kind of want to impress everyone.

24 There. Do you see that? Now it's on top, one page over  
25 to the next.

1 And then it goes on to say, "For example, most officers  
2 have a minimum four-year active duty service, but pilots incur  
3 a 10-year commitment."

4 Do you see that?

5 A. Yes. My understanding is that varies too by service.

6 Q. In the Air Force, it's 10 years. And for you, it was  
7 eight years after you got wing --

8 A. I want to say it was seven years after winging or -- I  
9 think it was seven at the time. It's changed, I believe, since  
10 then.

11 Q. And his point here is that, when you make a longer  
12 commitment, people might retain -- stay in more, right?

13 A. Yes.

14 Q. The earlier sentence I read about if members of different  
15 career fields have different promotion and retention rates and  
16 racial and ethnic gender groups do not distribute themselves  
17 equally across career fields, did that call to mind the  
18 discussion I had with your most recent superior, Mr. Vazirani,  
19 about subs, SEALs, and aviation?

20 Did you think of that when I read that sentence?

21 A. I was already thinking about it, but yes. Yes.

22 Q. And so that's one of the problems, right? Those are  
23 communities in the Navy that are strongly associated with  
24 potentially promotion and yet they're really not diverse?

25 A. They are less diverse. That is true.

1 Q. We'll get into more detail on that. I want to talk about  
2 the portion of Nelson Lim's article that deals with promotions.

3 And there's Section 4, and he seeks to answer two  
4 questions in his research.

5 Is a line officer who is a member of a racial/ethnic  
6 minority or a woman any less or more likely to be promoted than  
7 an equally situated line officer who is White or a man?

8 And we'll call that the discrimination question.

9 And the second question is which characteristics differ  
10 along racial, ethnic, or gender lines and are also important to  
11 promotion?

12 Do you see those two questions?

13 A. I do.

14 Q. I think we're all going to agree that the good news is we  
15 don't have to spend a lot of time on the first question because  
16 Nelson Lim found in his look-alike analysis that women and men  
17 and racial/ethnic minorities and Whites face the same promotion  
18 outcomes the vast majority of the time once differences in  
19 background, technical abilities, assignment history,  
20 performance awards, career field characteristics, and  
21 commissioning source are taken into account.

22 Do you see that?

23 A. I see that here, yes.

24 Q. Now, of course the optimum amount of bias and  
25 discrimination is always zero, right?

1 A. Yes, I would hope.

2 Q. So it's not a perfect system, but he's saying it's more or  
3 less fair, right?

4 A. Yeah. He says the vast majority of the time, once  
5 differences in background, technical abilities, assignment  
6 history, performance awards, career field characteristics, and  
7 commissioning source are taken into account. The vast  
8 majority; so not 100 percent, as you mentioned, but the  
9 majority in his findings.

10 Q. Right. So I'm going to go to the second question because  
11 it's where the Court has asked a lot of questions about  
12 promotion and race and ethnic diversity.

13 In the career successes cumulative section, it talks about  
14 the methodology that Nelson Lim proposed -- used, rather. It  
15 says, "In addition to comparisons of promotion by race,  
16 ethnicity, and gender, we analyzed each outcome by grade to  
17 identify the characteristics strongly related to promotion."

18 Do you see that?

19 A. I do.

20 Q. And he says, "We found the most influential  
21 characteristics on something called definitely promote award  
22 and promotion."

23 Have you heard of the definitely promote award in the Air  
24 Force?

25 A. Only through this analysis. It's not something that I'm

1 familiar with.

2 Q. I understand the Navy has something similar called early  
3 promote or must promote.

4 Did you know about that?

5 A. Around the edges of my consciousness, yes. I'm not deeply  
6 familiar with how it works.

7 Q. And in the Marines, it's a comment like promote ahead of  
8 peers or something?

9 A. Promote ahead of peers, below zone. They are different  
10 terms that are used.

11 Q. I'm quite sure, your fit reps said promote ahead of peers  
12 quite a bit, didn't they?

13 A. I have no idea, actually. It's been a while since I  
14 looked.

15 Q. Let's go look at the tables. So the DP is the definitely  
16 promote award. And promotion is -- that's self-explanatory.

17 There are some tables here, top ten predictors of  
18 selection by grade from USAFA graduates among line officers.

19 Do you see that?

20 A. I do.

21 Q. And major, lieutenant colonel, and colonel in the Air  
22 Force correspond to 04, 05, and 06.

23 Did I get that right?

24 A. Yes, you did.

25 Q. Here he's finding -- I want to highlight some of the



1 major contributors to promotion and the DP award. So at the  
2 top you see the predictors of promotion, and you see for major,  
3 Academic Order of Merit and Military Order of Merit.

4 Do you see that?

5 A. I do.

6 Q. And lieutenant colonel, Military Order of Merit. Do you  
7 see that?

8 A. Yes.

9 Q. And colonel, Military Order of Merit. Do you see that?

10 A. I do.

11 Q. And you know that refers to orders of merit at the Air  
12 Force Academy like you had at the Naval Academy, right?

13 A. Yes.

14 Q. And down below, I should also point out that one of the  
15 biggest contributors to whether you get promoted --

16 Oh, boy. This is going to be bad. This is going to be  
17 bad. Don't. Ah. I stopped it. It was going to blow up the  
18 whole screen.

19 One of the biggest contributors to getting promoted is  
20 towards the top -- or at the top on every one of them is the DP  
21 award.

22 Do you see that?

23 A. I do.

24 Q. And so now below we see what determines whether you get a  
25 DP award. And it turns out big contributors to that for the 04

1 level are Military Order of Merit, an Academic Order of Merit.  
2 And a substantial contributor to it in the lieutenant colonel  
3 is Military Order of Merit.

4 Do you see that?

5 A. Yes, I do.

6 Q. And you can also see that fighter pilot, which I've got  
7 underlined, is very correlated with promotion to major. And  
8 then for the DP award for major and colonel.

9 Do you see that?

10 A. Yes.

11 Q. So let's turn to the discussion section here. He starts  
12 off with "The fact that many of these characteristics are  
13 associated with increased likelihood of promotion is common  
14 lore in the Air Force. Most Air Force officers could probably  
15 name these characteristics on demand and few would dispute  
16 them."

17 Do you see that?

18 A. Is he talking about the characteristics listed in that  
19 table we were just on?

20 Q. I think so. So you see here there's a whole discussion of  
21 most influential characteristics on DP and award and promotion.  
22 And then he goes through some of the things that I just said.  
23 And then he's got the definitions, which are helpful. And then  
24 he talks about the characteristics.

25 But I actually wanted to ask you about your own

1 experience. Is this comporting with your own experience in the  
2 Marines? There are some jobs that you're more likely to get  
3 promoted if you're in, or do I have that wrong?

4 A. So it's changed a bit over time. I would say from my  
5 perspective, just my personal experience, not looking broadly  
6 at the Marine Corps as a whole, it really depended in the early  
7 years. But when you look at the higher ranks, general  
8 officers, they tended to be combat arms officers.

9 Q. And then the next sentence, which I've got highlighted  
10 here, says, "The more interesting point is the way these  
11 characteristics build over time, essentially separating those  
12 identified for quick promotion from those with less of a  
13 promotion future early on."

14 Do you see that?

15 A. I do.

16 Q. Now, one thing that was interesting is you saw the order  
17 of merits all over the previous tables. But order of merit is  
18 not visible to a promotion board years later because 04 is  
19 years after you've accessed, right? So it can't be that the  
20 promotion board is deciding promotion on order of merit, is it?

21 A. I have not sat on a promotion board; so I can't speak to  
22 that.

23 Q. Well, Nelson Lim speaks to it a little bit down below when  
24 he says, "This story does not imply that these specific  
25 characteristics cause promotion. Some are visible to promotion

1 boards; others are not visible to promotion boards but are  
2 correlated with officer quality traits that affect performance  
3 and career paths."

4 Do you see that?

5 A. I do.

6 Q. So he's not saying these things cause promotion; he's  
7 saying they're highly correlated with things that might cause  
8 promotion, right?

9 A. That's how I read that.

10 Q. So then down at the bottom of the same page, he talks  
11 about use of policy tools could mitigate gaps.

12 "While there were few unexplained racial/ethnic gaps, this  
13 reality does not change the facts that minorities will continue  
14 to have lower promotion rates to the degree that they lack the  
15 characteristics in Table 4.2 and 4.3 we just went through. For  
16 example, in all the USAFA" -- is that the way we say it? We  
17 say USAFA?

18 A. I don't know that I would say that to an Air Force Academy  
19 graduate in a dark alley without anyone around to watch, but I  
20 have heard it that way.

21 Q. What would you say to the Air Force Academy graduate in  
22 the dark alley?

23 A. Air Force Academy.

24 Q. Okay.

25 For example -- so you don't know this, but

1 Mr. Strawbridge's son is at the Air Force Academy. And he says  
2 USAFA in the office all the time. And now he's in trouble.

3 (Laughter.)

4 **BY MR. MORTARA:**

5 **Q.** For example, for all of the Air Force Academy graduates  
6 who met colonel promotion boards from 1999 to 2007, 3 percent  
7 of the African American officers were fighter pilots compared  
8 with 24 percent of the White officers.

9 Do you see that?

10 **A.** I do.

11 **Q.** Does that also call to mind the discussion me and  
12 Mr. Vazirani were having about SEALs, subs, and aviation?

13 **A.** Yes.

14 **Q.** So let's go to the conclusions.

15 The first conclusion is one we talked about.

16 "First, there is no evidence to suggest that the Air Force  
17 promotion system is unfair." Even though we might have some  
18 disagreements in this case, we can all agree that's good,  
19 right?

20 **A.** Yes.

21 **Q.** The second conclusion is that "many of the predictors of  
22 promotion to the more senior levels actually begin with  
23 characteristics that are determined early in an officer's  
24 career, including career field. Furthermore, promotion  
25 prospects are not reset at each level, but rather these

1 important characteristics accumulate over time," right?

2 A. I would agree with that, yep.

3 Q. And then there's a discussion that follows.

4 "The implications of these findings for minority groups in  
5 the Air Force is that, when these groups on average lack these  
6 vital characteristics, their promotion prospects will be  
7 greatly diminished."

8 Do you see that?

9 A. I do.

10 Q. "For example, Figure 4.1 showed that African Americans  
11 tend to have lower Air Force Academy order of merit ranks. The  
12 data show that this lower order of merit ranking is strongly  
13 correlated with, though not necessarily causally related to,  
14 promotion and that this lower ranking could translate into  
15 lower promotion rates for African Americans."

16 Do you see that?

17 A. I do.

18 Q. "In addition, Tables 4.2 and 4.3" -- those are the ones we  
19 looked at with the different pluses and minuses -- "show that  
20 some career fields have higher promotion likelihoods than  
21 others. Because minorities tend to locate in different and  
22 less-promoted career fields than Whites, they have lower  
23 promotion rates."

24 Do you see that?

25 A. Yes. I do.

1 Q. "Finally, these results suggest that if improving  
2 promotion prospects for minorities is a policy goal, the Air  
3 Force likely needs to begin with recruiting. The accession  
4 sources should seek comparable quality across ethnic minority  
5 groups in their admission and selection processes since  
6 competitiveness at even this stage is a predictor of promotion  
7 success."

8 Do you see that?

9 A. I do.

10 Q. Your colleague -- your former colleague Mr. Lim is saying  
11 here that the Air Force Academy should seek minority cadets  
12 that are of comparable quality to White cadets and that, if  
13 they do not get that, then they will not be successful at  
14 diversifying the senior officer corps. Isn't that what this  
15 means?

16 A. That's not how I read it. Let me think about this one and  
17 see if I can --

18 Q. Sure.

19 A. -- say what's in my head in words that make sense.

20 If you forgive me a little story --

21 Q. Please.

22 A. -- when -- you heard during my direct the story of how I  
23 got into the Naval Academy the second time.

24 Q. You went to Penn State for a year -- you went --

25 A. I went to the Naval Academy for a day. I quit --

1 Q. You quit --

2 A. -- because I was afraid --

3 Q. -- went to Penn State for a year and realized you made a  
4 mistake --

5 A. -- and I was immature.

6 Right. Yes. And I reapplied --

7 Q. We're upsetting Ms. Thomas.

8 A. Oh, I'm sorry.

9 Q. It's my fault. I'm the lawyer.

10 A. I learned later that there were two spots left for my  
11 class when the head of the admissions board pushed my folder  
12 forward for one of those two. And he said, "This one is mine."  
13 The dean and the head of the admissions board each had a vote,  
14 and it was his and he picked me.

15 You know, the whole time I was at the Academy, I heard  
16 repeatedly from classmates that -- some of the same  
17 classmates -- that women were there taking up spots from  
18 qualified men and that we were taking seats from men who really  
19 could be there and et cetera. And I'm getting to why this  
20 matters.

21 When I found out later that there had been two spots left  
22 on the board and, like, between 100 and 200 applications and  
23 mine was one of those selected for the two spots, it wasn't  
24 that I was less qualified and they said oh, we need a woman,  
25 let's plug her in; it was that we were all qualified at that



1 stage and we had a mix of qualifications and characteristics.

2 And the admissions board looked at what they needed, given  
3 what they were attempting to do to build the Navy they wanted  
4 to build or Marine Corps, as it would turn out, and they saw me  
5 as filling one of those needs. Whether you agree with that,  
6 you know, we can discuss. I certainly am glad they did.

7 But when I read this, comparable quality in their  
8 admissions and selection processes, I read this as we want to  
9 seek out the best people we can across this nation -- and  
10 apologies if this makes you blurry -- to fill those different  
11 roles and to fill those spots at the academies and onward.

12 I don't view it as exactly the same quality. It really  
13 depends on what the admissions board and the leadership  
14 determine are the characteristics they're looking for.

15 Q. And, Dr. Haynie, I wasn't going to ask you this, but, I  
16 mean, first of all, on behalf of Students for Fair Admissions,  
17 we think the Naval Academy made a great decision because we got  
18 a very accomplished and very, I think, decorated Cobra attack  
19 helicopter pilot out of those final two spots, if I'm not  
20 mistaken.

21 That's what we got, right?

22 A. I don't know.

23 Q. We got you?

24 A. I mean, we got me, right.

25 But the point of the story was that we all came in with

1 different qualities. Everyone who was -- all the folders on  
2 that table that day were qualified for admission. And so the  
3 Navy looked at all of those and said all of these people could  
4 fit.

5 And there were -- I want to say it was 150. It was  
6 somewhere between 100 and 200. They said given what we want  
7 and need, what are the people that we need for the Navy of the  
8 future to accomplish our mission? And mine was one of those  
9 pulled.

10 And I see that as parallel to what Dr. Lim and his team  
11 are determining here. We need high quality across the  
12 candidates, and we should seek high-quality candidates from  
13 across the breadth of America. Without talking to Dr. Lim and  
14 team to dig into comparable -- exactly what they mean if they  
15 had, like, specific values with it or something, that's my best  
16 guess reading this.

17 **Q.** Now, Dr. Haynie, based on what you just said, you talked  
18 about everybody being qualified. I presume, based on what you  
19 just said, that you would not want gender or race to be used as  
20 a factor, even among many, in deciding the threshold issue of  
21 whether someone was qualified?

22 **A.** I don't agree with that either. I think, you know, if  
23 we're trying to build a diverse military, you know, it is  
24 important that we consider the different attributes that people  
25 bring to include who they are, where they come from, and what

1 they can attribute to the problem. I mean, at the time, I did  
2 not know that one of the reasons that I was kind of highlighted  
3 and brought in was because I'm a woman. It wasn't just because  
4 I'm a woman; it was because I was an accomplished woman and had  
5 these qualifications, and that was seen as valuable.

6 **Q.** You don't think you were deemed qualified to attend the  
7 Naval Academy in part because you're a woman, do you?

8 **A.** No, I don't. No.

9 **Q.** So I'll just ask my question again. You don't think that  
10 there should be different standards for men and women such that  
11 women are deemed to be more likely to be qualified simply  
12 because they're women?

13 **MR. ROBINSON:** Objection. Asked and answered.

14 **THE COURT:** It's sustained.

15 **MR. MORTARA:** Thank you, Your Honor.

16 **THE COURT:** Objection is sustained.

17 **MR. MORTARA:** Thank you, Your Honor.

18 **BY MR. MORTARA:**

19 **Q.** I want to go to another page of the conclusions. There's  
20 a section on promotion that starts at the bottom of 51 --

21 **THE COURT:** This might be a good point to stop just  
22 for about 10 minutes, give Ms. Thomas a little break, and then  
23 we'll go on until 5:00.

24 So we'll take about a 10-minute late-afternoon recess.

25 **THE CLERK:** All rise. This Honorable Court is in

1 recess.

2 (A recess was taken from 3:35 p.m. to 3:55 p.m.)

3 **BY MR. MORTARA:**

4 **Q.** Welcome back, Dr. Haynie. We were about to go to the  
5 conclusions section of Mr. Lim's article. And I've pointed out  
6 to you under promotions starting at page 51, there's a  
7 paragraph that says, "In addition, the findings reveal how  
8 several characteristics that are strong predictors of promotion  
9 to senior levels actually start with characteristics that  
10 developed early in a officer's career. The importance of these  
11 characteristics grows over time because promotion prospects at  
12 each level take into account an officer's entire career. They  
13 are not reset at each pay grade."

14 Do you see that?

15 **A.** Yes, I do.

16 **Q.** And here's another paragraph discussing the same concept  
17 that we were discussing right before the break.

18 "For minority groups who are less likely to have at least  
19 some of these vital characteristics, promotion prospects  
20 diminish as their careers move forward. The policy  
21 implications of analysis promotion then circle back to  
22 recruiting and accessions where many of these characteristics  
23 begin."

24 Similar to what we talked about before, right?

25 **A.** Yes.

1 Q. Then it says, "Recruiters, college selection officials for  
2 ROTC and the Air Force Academy and those responsible for finer  
3 selection for commissioning need to identify applicants of all  
4 racial/ethnic groups who are of high and comparable quality."

5 That's the same statement we were just talking about,  
6 right?

7 A. Yes.

8 Q. And he goes on, "This means that high school students  
9 selected for ROTC and the Air Force Academy need to be  
10 comparably strong, that ROTC programs should draw from highly  
11 selective college and universities, and that minority cadets at  
12 the Air Force Academy should have the same level of  
13 qualifications on average as White cadets."

14 Do you see that?

15 A. I do.

16 Q. The last sentence says, "As shown in the results, even a  
17 small change in the rankings of minority Air Force Academy  
18 undergraduates can lead to notable changes in diversity later."

19 Do you see that?

20 A. Yes, I do.

21 Q. And then at the bottom is the other concept we've been  
22 discussing.

23 "Second, more racial/ethnic minorities and women who are  
24 cadets and officers need to be in rated career fields which  
25 have the highest promotion rates, e.g., pilot, navigator, air

1 battle manager, combat systems officers, flight surgeon."

2 Do you see that?

3 A. I do.

4 Q. That recalls again the conversation I had with  
5 Mr. Vazirani, right?

6 A. Yes.

7 Q. You don't happen to know where Black midshipmen are  
8 predominantly found in the order of merit at the Naval Academy  
9 today, do you?

10 A. No.

11 Q. That's okay. Another witness has testified about that.

12 I want to just make clear, you showed this article by  
13 Nelson Lim briefly on the screen in your direct testimony,  
14 correct?

15 A. That is correct.

16 Q. But you did not discuss any of the content of it, correct?

17 A. That is correct.

18 Q. There are some articles you cited in your report -- and I  
19 think towards the end of your direct examination, you said, "I  
20 rely on all of those."

21 There was a showing of some of them, but you didn't show  
22 all of them, did you?

23 A. No. There were more in my disclosure as well.

24 Q. I'm going to show you on the screen "Racial/Ethnic  
25 Minority Representation in the Officer Corps: Eliminating

1 Black/African American, Hispanic, and Asian" -- "examining,"  
2 sorry -- "Black/African American, Hispanic, Asian retention and  
3 promotion rates among cohorts of active duty officers, 2001 to  
4 2019."

5 This is the Defense Exhibit 151. This is one of the  
6 articles you relied on in your declaration, correct?

7 A. I can't remember if I said it in the declaration or if it  
8 was in the broader interrogative, but I am familiar with it.  
9 I'm familiar with a draft of it, yes.

10 Q. 194 is your disclosures for this case. You'll see it's  
11 cited there --

12 A. There it is.

13 Q. -- at the bottom of Footnote 35.

14 Does that refresh your recollection?

15 A. Yes, it does.

16 Q. So now to this report. In the executive summary,  
17 Number 2, it says, "Black/African American and Hispanic  
18 retention is generally higher than White retention across the  
19 entire career pipeline."

20 Do you see that?

21 A. I do.

22 Q. "Black/African American and Hispanic officers  
23 overwhelmingly choose to stay on active duty for 20 years and  
24 make the military a career, unlike many of their White peers."

25 Do you see that?

1 A. I do.

2 Q. Now, you heard Mr. Vazirani say that, potentially, bias  
3 could stop people from staying in the military services.

4 Do you remember that?

5 A. Yes.

6 Q. That does not appear to be a huge impact on retention  
7 rates with Black and Hispanic officers because their retention  
8 rates actually exceed White officers.

9 Do you agree with that?

10 A. I would not agree with the statement that it's not a huge  
11 impact.

12 Q. Why not?

13 A. Because this is a -- it's a complex process why people go  
14 or stay. There are a lot of different factors at play.

15 I think the ROI and D&I report show that it is a factor  
16 for some people. This shows that retention is higher. There  
17 could also be -- I believe there are other factors that go into  
18 shaping that retention of different people from different  
19 groups, but it is a complex process.

20 Q. Let's keep looking in this report.

21 Going now to page 18, and there's a paragraph at the  
22 bottom that says, "Throughout military history and today  
23 Black/African American officers have served in markedly  
24 different occupations than White officers. Black/African  
25 American officers are substantially overrepresented in



1 administrator and supply occupations, occupations with  
2 historically low representation among senior leadership.

3 "Additionally, while 35 percent of the officer corps  
4 serves in tactical operations, only 22 percent of Black/African  
5 American officers serve in tactical operations -- operation  
6 occupations. Of all of the occupations, tactical operation  
7 officers are the most likely to occupy senior leadership  
8 positions."

9 Do you see that?

10 A. I do.

11 Q. And that, again, recalls the conversation I had with  
12 Mr. Vazirani about how certain occupations lead more  
13 predominantly to, for instance, flag officer, right?

14 A. Yes.

15 Q. On the next page there's a table, occupations with the  
16 highest and lowest representation of Black/African American  
17 officers. On the left for the Army, you see, for example,  
18 senior human resources officer, and for the Marines, ground  
19 supply, and the percentages there.

20 On the right, you see the lowest representation in each of  
21 the services. For the Army, it is special forces, aviation  
22 combined operations, and aviation.

23 Do you see that?

24 A. I do.

25 Q. And for the Navy, it's aviation warfare pilot, submarine

1 warfare, and special warfare. That's the SEALs.

2 Do you see that?

3 A. Yes.

4 Q. For Air Force, it's fighter pilot, special operations  
5 pilot, and helicopter pilot.

6 Do you see that?

7 A. Yes.

8 Q. And the last for your own service, the Marine Corps, it's  
9 utility helicopter pilot, attack pilot, and fighter attack  
10 pilot.

11 Do you see that?

12 A. I do see it.

13 Q. Your own warfighting community would be attack pilot?

14 A. That is most likely, and I'd have to see what they used to  
15 call the Harrier community, VMAs. But I'd have to go back and  
16 see how they coded it.

17 Q. There's consequences to this distribution that I think  
18 we've talked about a few times. If you go to page 20, there's  
19 just a comment that I'll ask -- in this article you cited.

20 "While the overrepresentation of Black/African American  
21 officers in noncombat occupations can be explained both by  
22 officers' choices and historical trends, the low representation  
23 of Black/African American officers in many tactical operations  
24 occupations, e.g., special forces, pilots, submarine warfare,  
25 hurts diversity at the general officer, flag officer level."

1 Do you see that?

2 A. I do.

3 Q. You were here when the Court and I, along with  
4 Mr. Vazirani, had almost a three-way exchange on this very  
5 subject, correct?

6 A. Yes.

7 Q. Some of the lack of representation of Black officers at  
8 the general officer, flag officer level is a result of choice,  
9 correct?

10 A. My understanding is that part of it is choice.

11 Q. You will recall our discussion about the 2024 Naval  
12 Postgraduate School study, P800, that we had where they did the  
13 literature review in the DITC -- there was a database that they  
14 did, and they said that they couldn't find anything relating  
15 performance to diversity in that database.

16 But you believe that studies supporting the effectiveness  
17 of diversity in the business context support diversity efforts  
18 in the military, right?

19 A. In part, but I believe I mentioned this earlier. I  
20 started off being more familiar with the conflict and security  
21 literature; and when I later started reading more about the  
22 business case in broader society, I recognized some  
23 similarities in those research.

24 But I would say my primary driver of my understanding and  
25 my opinion on these today is rooted in my understanding of war

1 and with an academic research into war and security.

2 Q. In your declaration, Defense 194 at paragraph 8, you have  
3 a sentence, "Homogeneity and exclusionary practices can limit a  
4 workforce from accessing these benefits and may lead to less  
5 accuracy in information analysis, less innovation capacity,  
6 more errors in decision-making, and greater risk aversion,  
7 increasing vulnerability and risk in the face of adversaries or  
8 key challenges."

9 Do you see that?

10 A. Yes.

11 Q. And then in Footnote 6 you cited Linda Slapakova, which we  
12 put aside for one -- that's Plaintiff's 597. We're going to  
13 talk about that in a bit.

14 And the next article you cite is by David Rock and Heidi  
15 Grant, "Why Diverse Teams Are Smarter." And that is in the  
16 *Harvard Business Review*. Right?

17 A. That is correct.

18 Q. Let's take a look at Rock and Grant. This is Rock and  
19 Grant, "Why Diverse Teams Are Smarter."

20 MR. MORTARA: Labeled for identification purposes,  
21 Your Honor, as Plaintiff's 823.

22 BY MR. MORTARA:

23 Q. This is not peer-reviewed literature, is it?

24 A. I don't remember. I don't believe this one is, but I'd  
25 have to check at the bottom to see if it's got any

1 qualifications on it.

2 Q. And the first thing cited here is a 2015 McKinsey study,  
3 right?

4 A. Yes.

5 Q. These studies by McKinsey are quite well known, you would  
6 agree?

7 A. I believe they are in generally in the management and  
8 leadership development field, yes.

9 Q. They conclude that executive teams that are diverse make  
10 their firms more profitable, right?

11 A. I don't have the reports in front of me; so I'd be going  
12 off of memory. I have not focused significantly on McKinsey's  
13 work.

14 Q. The McKinsey analysis has been cited many times by people  
15 in the DEI industry to justify the benefits of diversity.  
16 Wouldn't you agree?

17 A. I don't know that I'd agree with that. I have certainly  
18 seen it at different times out there, but I wouldn't say it's  
19 consistently. I have not measured it. I don't look for it.

20 Q. You cited Rock and Grant --

21 A. Yes.

22 Q. -- in your declaration. And the very first thing they  
23 cite is McKinsey, right?

24 A. Yes, that is one of the reports they cite.

25 Q. And one of the latest things the McKinsey work is well

1 known for is that in 2024 independent researchers have been  
2 unable to reproduce their results and, in fact, seriously  
3 question the conclusions, right?

4 A. Yes, I saw that.

5 Q. You saw that in, amongst other places, in *The Wall Street*  
6 *Journal* perhaps?

7 A. I don't remember exactly where I saw it. I became aware  
8 of that at some point this summer, yes.

9 Q. You didn't tell the Court or -- in your direct testimony  
10 that the very first thing cited in the Rock and Grant article  
11 that is cited in your declaration has been the subject of  
12 controversy this year?

13 A. No, because I didn't find it relevant. I don't use  
14 McKinsey research as a core source for my opinion and my  
15 knowledge.

16 Q. You used Rock and Grant, which is the *Harvard Business*  
17 *Review*, which cites McKinsey, though?

18 A. As one of a number of studies that they cite and as one of  
19 a number of studies that I cite in my disclosure.

20 And to be quite frank, I mentioned this earlier, but my  
21 background is in the competent security literature; so was late  
22 to come to the D&I research. And when I found it, I found it  
23 interesting that similar trends were being found in the general  
24 population as they are in the kind of war and security or  
25 competent security literature.

1 So only recently became familiar with the McKinsey work,  
2 but I've seen it cited, yes.

3 Q. You also put this document on the screen. This is Defense  
4 Exhibit 135. This was one of the ones you put on the screen  
5 and then didn't really discuss. It's the Hong article,  
6 "Diverse Problem Solvers Can Outperform Groups of High-Ability  
7 Problem Solvers."

8 Do you remember this one?

9 A. I do.

10 Q. You called this a study in your direct testimony.

11 Do you remember that?

12 A. Yes.

13 Q. I'm blowing up the abstract. Actually, that might be  
14 unhelpful for you. Hold on. Let me see if I can do something.

15 A. I can read it as it is, unless you can't.

16 Q. I'm trying to accommodate other onlookers. Let's see if  
17 we can reach a happy medium.

18 How about that?

19 A. That works.

20 Q. So having blown up the abstract --

21 MR. MORTARA: And I won't read the whole thing into  
22 the record, Your Honor.

23 BY MR. MORTARA:

24 Q. -- this is a paper from 2004 that reports on a computer  
25 model and computational experiment involving something called

1 intelligent agents, right?

2 A. Yes.

3 Q. That's a machine learning concept, right?

4 A. So I would want to go back and read the definition again  
5 of what it is and how they cultivated the study, basically.

6 Q. This is a math paper with a computer experiment, right?

7 A. Yes, but they also -- let me read the basics again.

8 Q. Sure. I can give you have a copy if you need it.

9 Would you like a copy?

10 A. Please. If you have it.

11 Q. Oh, you know, I don't because I thought they would give  
12 you one. Darn. I will help.

13 Mr. Robinson has one. He's proving again why he is my  
14 favorite Justice Department --

15 THE COURT: Take your time.

16 BY MR. MORTARA:

17 Q. In the meantime, you can start on the screen here. I'm  
18 going to pull it out again because you said you could read it.  
19 So --

20 A. Yes.

21 Q. And it's really just a brief question. This is a computer  
22 study using intelligent agents, which is a machine learning  
23 concept. It doesn't actually study any human decisions.

24 A. (Witness reading.)

25 I think this one may be missing the last page. I don't



1 know if you all have any other -- if not, we could maybe  
2 scroll --

3 Q. If from the beginning -- I can put the last page up.

4 There's the last page, "Concluding Remarks."

5 Again, the question is no actual human decisions were  
6 studied in this article?

7 A. So my understanding is that they were not, but I'm trying  
8 to remember. There's -- there's something with -- there was  
9 something else with Scott Page that's coming to mind. And I  
10 can't recall it right now; so apologies about that.

11 Q. And you agree that this is an early machine learning  
12 paper, these intelligent agents, right?

13 A. I mean, it's definitely early in the field. It's 2004, I  
14 believe.

15 Q. Machine learning has come a long way in the last 20 years?

16 A. Yeah, I would hope so.

17 Q. And, in fact, to your knowledge, DoD has never done any  
18 kind of quantitative analysis, large or small, that examines  
19 whether diverse teams resolve complex problem sets better than  
20 nondiverse teams, correct?

21 A. That is correct.

22 Q. Let's turn to Slapakova. This, you discussed at a little  
23 bit more length with Mr. Robinson. And you remember I asked  
24 you about this passage that you cited and the footnote.

25 Do you remember that?

1 A. Yes.

2 Q. Now, we're going to go through these things. And the  
3 first article cited is Kraus 2007. Hopefully going to remind  
4 you that you're familiar with that.

5 Here's the title of that article, "The Impact of Diversity  
6 on Air Force Mission Performance."

7 Do you see that?

8 A. I do.

9 Q. You are familiar with that article, aren't you?

10 A. In passing. It's been some time since I've read it.

11 Q. It's a pretty grabby title, just like the one from the  
12 Naval Postgraduate School from a few months ago, for this case,  
13 right, "The Impact of Diversity on Performance," right?

14 A. Yes. But, I mean, I have looked at a lot of research  
15 studies. So, yes, I'm familiar with the study in general. I'd  
16 have to go back and reread it to answer specific questions.

17 Q. And it's the most recent study cited in Footnote 25 of  
18 Slapakova, which you did rely on in your direct testimony.  
19 It's the most recent article.

20 A. That is correct.

21 Q. I'm going to put up Plaintiff's 849, which is the Kraus  
22 2007 article from CNA. That's where you work now?

23 A. That is, yes.

24 Q. "The Impact of Diversity on Air Force Mission  
25 Performance." On page 1 it says what they did in their issues

1 and approach.

2 "In the spring of 2005, staff from the Air Force Office of  
3 Strategic Diversity Integration interviewed recently deployed  
4 USAF personnel to get their insights about the  
5 diversity/capability relationship in this vital setting."

6 Do you see that?

7 A. Yes.

8 Q. Do you happen to remember how many people were  
9 interviewed?

10 A. Oh, I don't, not off the top of my head.

11 Q. It's okay. It's on the next page.

12 "Working with transcripts of the 37 interviews that were  
13 conducted, we analyzed the qualitative data."

14 Do you see that?

15 A. I do.

16 Q. And in this article Linda Slapakova cited, it reported the  
17 attitudes about demographic diversity, and the highlighted  
18 language, "The good news is, based on our coding of the  
19 interview transcripts, the majority of respondents perceived  
20 that demographic diversity did affect mission capability in  
21 their deployments."

22 Do you see that?

23 A. Yes, I do.

24 Q. And Kraus goes on to report that "Specifically, of the 37  
25 respondents, we coded 13 as perceiving that demographic

1 diversity had a positive effect on mission capability and 10 as  
2 perceiving that demographic diversity had a negative impact on  
3 diversity."

4 Do you see that?

5 A. I do.

6 Q. This is what Dr. Slapakova thought supported the  
7 statements that are shown on the left side supported by a  
8 growing body of literature on diversity and inclusion. "Many  
9 military organizations now recognize and foster the  
10 contributions of diversity to military readiness and other  
11 elements of organizational effectiveness."

12 Do you see that?

13 A. I do, yes.

14 Q. Do you think that's actually a good support for that  
15 statement? A study of 37 people, where 13 say it's good and 10  
16 say it isn't?

17 A. I think it is for the context. I see the e.g., which,  
18 again, I can't remember if it's for example or -- I can't  
19 remember what the e.g. technically stands for.

20 But Janowitz and Moskos; Miller, Segal, and Hansen; Segal  
21 and Bourg; and Kraus, et al., those are examples articles.  
22 Personally, if I was writing this, there are a range of other  
23 articles that could be pulled here.

24 So I'd want to read Kraus, et al., again to see what else  
25 it says. But I think, regardless, in the context, they do

1 research into diversity and perceptions of the impacts of  
2 diversity on performance. So I don't see a problem with  
3 including it.

4 I wouldn't, as a researcher reading this and look at that  
5 footnote and go these one, two, three, four, five studies  
6 definitely say -- say these include discussions and information  
7 and potentially data around these topics that could be relevant  
8 to understanding that phrase in the document.

9 Q. Let me ask it a different way.

10 Would you have cited Kraus for this proposition in your  
11 own scholarly work?

12 A. Based on this one paragraph that I'm seeing right now?  
13 Probably not, but I would want to read the study as a whole.

14 For example, "a growing body of literature on diversity  
15 and inclusion" tells me that there may be research cited in  
16 this report or past studies that are cited in Kraus, et al.,  
17 that may be relevant to the first part of that page, not  
18 specifically just the finding right there in that paragraph.

19 Q. I'm sure Mr. Robinson will bring it up if there is.

20 Moving on to Segal and Bourg 2002. I don't know if you're  
21 familiar with this one.

22 A. Off the top of my head, no. I'm familiar with Segal's  
23 work.

24 Q. It's a book chapter, "Professional Leadership and  
25 Diversity in the Army" in this book edited by Snider, et al.

1 You're not familiar with this one?

2 A. Off the top of my head, no.

3 Q. Let's move on to Segal and Hansen and see if you're  
4 familiar with this one. This is from 1992.

5 "Value, Rationales, and Policy Debates on Women in the  
6 Military."

7 Did you know that one?

8 A. I've read this, but it's been, like, 15 years.

9 Q. And even though it's been 15 years, just by the title, it  
10 doesn't seem to have much to do with racial diversity, does it?  
11 Just by the title.

12 A. I wouldn't say -- can you rephrase -- sorry. Say the  
13 question again.

14 Q. Judging by the title, its focus is not racial and ethnic  
15 diversity?

16 A. I mean, I don't know. I would have been reading this 10,  
17 15 years ago through my work to help drive for integration of  
18 women in the military, which included women of different  
19 backgrounds, not just women of one race or ethnicity. But I  
20 don't remember what's contained in there.

21 Q. The next one is Miller '97. I'll put it up on the screen  
22 and ask if you recognize it. It's "Not Just Weapons of the  
23 Weak: Gender Harassment as a Form of Protest for Army Men."

24 Are you familiar with that one?

25 A. I am. It's been a while though. But, yes, I am.

1 Q. Would you say that the top focus of that one is racial or  
2 ethnic diversity?

3 A. No. It's likely gender. But, again, this comes back to  
4 my point about intersectionality. I don't know -- I don't  
5 remember what it covers inside of it.

6 Q. Well, there is one about race, this last one, Janowitz and  
7 Moskos. See that at the top? "Racial Composition in the  
8 All-Volunteer Force: Armed Forces and Society."

9 Do you see that?

10 A. I do.

11 Q. Have you read that one?

12 A. Oh, boy. I know I've read some of their work; I just  
13 don't remember if I've read that one.

14 Q. I'll put it up on the screen and see if you recognize it.

15 This is the first page of Janowitz and Moskos, "Racial  
16 Composition in the All-Volunteer Force."

17 MR. MORTARA: Marked for identification purposes, Your  
18 Honor, as Plaintiff's Exhibit 866.

19 THE COURT: 856 marked for identification only.

20 MR. MORTARA: 66. Sorry, Judge.

21 THE COURT: 856.

22 THE CLERK: Judge, 866.

23 THE COURT: 866.

24 BY MR. MORTARA:

25 Q. And you see the first sentence, "With the all-volunteer

1 force entering its second year" -- this is, after all, 1974 --  
2 "it becomes more and more appropriate to raise and discuss the  
3 implications of overrepresentation of Blacks in the U.S. armed  
4 forces."

5 Do you remember this piece?

6 A. I don't remember it specifically, but I remember it kind  
7 of broadly, the name and things. I just don't remember the  
8 specifics. I don't want to read it again.

9 Q. Would you agree with me it's pretty unlikely this has to  
10 do with racial diversity in the officer corps from 1974?

11 A. I mean, I don't know. I'd want to look at it. I can't  
12 answer that from just the first sentence.

13 Q. I want to wrap up.

14 Well, actually, first I want to ask you about OPA. I have  
15 this big wrap-up. I got all ready to do it, and I'm --

16 A. I'm sorry. Helicopter pilot. Can you say that again?

17 Q. I have to ask you about OPA briefly.

18 A. Okay.

19 Q. It's my fault. I've got a great ending.

20 This is the OPA study -- the survey that you talked about  
21 with Mr. Robinson. And, actually, Mr. Vazirani talked about  
22 that, right?

23 A. Yes, he did.

24 Q. One article from your declaration that you did not talk  
25 about that I want to just briefly mention is this article by



1 MacCoun in Footnote 10, "Does Social Cohesion Determine  
2 Motivation in Combat? An Old Question with an Old Answer."

3 Do you see that?

4 A. I do.

5 Q. And that's cited in your declaration. And why is that  
6 relevant to the OPA article? Here's Plaintiff's Exhibit 827,  
7 the MacCoun article cited in your declaration at page 4.

8 There's a whole discussion about the reliability and  
9 validity of self-reports, where, amongst other things in this  
10 article, it says, "There is broad agreement among social  
11 scientists that people are often unable to reliably and validly  
12 perceive and report on the causes of their behavior."

13 Do you see that?

14 A. I do.

15 Q. And that was present in an article that you cited in your  
16 declaration but you didn't talk about in your direct testimony,  
17 correct?

18 A. That is correct.

19 Q. Now I can get to the end.

20 I want to talk about one more thing that you haven't  
21 mentioned. You've written passionately about how the Marines  
22 should not have different standards for woman, correct?

23 A. I wrote that in a blog post for the Naval Institute, I  
24 think, nine, ten years ago.

25 Q. It's on the screen now as Plaintiff's Exhibit 865 for

1 identification purposes only. It's called "On Standards and  
2 Women," from August 8th, 2015.

3 This is the blog post you mentioned?

4 A. Yes, it is.

5 Q. You wrote, "The implications of lower standards for women  
6 are restrictive, dangerous, and biased," right?

7 A. Yes. This was specifically about the changes in PFT and  
8 career pathways, occupational standards, those different  
9 standards.

10 Q. And on the second page, you could see you wrote, "Higher  
11 standards may be tough to reach at first, but they are  
12 reachable. And by holding expectations low, we are just  
13 teaching that that's all we can expect from women."

14 Do you remember that?

15 A. I do, yes.

16 Q. And you continued, "Lower, different standards are biased  
17 because they separate Marines into two categories based on  
18 nothing but stereotypical beliefs that certainly don't apply to  
19 any individual, male or female, who decides they want to become  
20 a Marine."

21 Do you see that?

22 A. Yes, I do.

23 Q. And it goes on to say, "Who wants to become a watered-down  
24 version of a Marine?" Right?

25 A. That is correct, yes.

1 Q. Now, you strongly believe that gender diversity is an  
2 operational advantage on the battlefield, correct?

3 A. I do.

4 Q. Would you maintain lower standards of the ones discussed  
5 here, for example, for female Marines, in the hope of obtaining  
6 that operational advantage?

7 A. So let me be clear about the intent of this. So this was  
8 at a time where the Marine Corps had first said women need to  
9 do pull-ups for the physical fitness test and then backed that  
10 off a little bit and said no pull-ups for the physical fitness  
11 test.

12 And at the time a bunch of us had been working out trying  
13 to get pull-ups and get better at them. So this was largely in  
14 response to that, in response to the need to have -- on one  
15 hand, we had occupational specialty qualifications that  
16 required, regardless of gender, people to lift an ammo crate or  
17 do kind of a clean and press, different weight kind of aerobic  
18 qualifications; on the other hand, you had the physical fitness  
19 test, and that was a generalized test of health and fitness.

20 What I was calling for in here was to keep those standards  
21 high for women for the general test, the physical fitness, the  
22 PFT, so that we could aim for those standards and we could be  
23 considered the same, because we were getting a lot of flack at  
24 the time in uniform from our male colleagues.

25 Q. You took a test when you were at the Naval Academy,

1 something called the AFSB or ASFB? It's a test for aviation --  
2 competence or propensity to be able to be a good aviator. It's  
3 a test everybody has to take before they can become an aviator?

4 A. I'm sure I did. I don't remember, but I'm sure I did.

5 MR. MORTARA: Well, Dr. Haynie, on that note, on  
6 behalf of Students for Fair Admissions and myself personally,  
7 your service to this country is really appreciated and you are  
8 a great role model and a heroine.

9 Thank you.

10 THE COURT: Thank you, Mr. Mortara.

11 And, with that, the redirect, Mr. Robinson.

12 MR. ROBINSON: Yes. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. ROBINSON:

15 Q. First, just a couple housekeeping issues.

16 I believe Mr. Mortara, on cross-examination, asked you  
17 some questions, Dr. Haynie, about Defense Exhibit 151.

18 If we could put that up.

19 It's a Booz Allen study, and it's purely a housekeeping  
20 question.

21 So Mr. Mortara, I think, put this up, asked you some  
22 questions about it. I did not object.

23 MR. ROBINSON: So just for the record, my  
24 understanding is this document is now in evidence.

25 THE COURT: Yes, it is in evidence. It was previously

1 put in evidence.

2 MR. ROBINSON: Yes.

3 BY MR. ROBINSON:

4 Q. And, second, Mr. Mortara asked you some questions about  
5 Plaintiff's Exhibit 823, which we have as Defense Exhibit 188.  
6 This is that article by Rock and Grant in the *Harvard Business*  
7 *Review*.

8 This document, I think, Mr. Mortara did introduce for  
9 identification purposes. I would now like to just confirm that  
10 you relied on this article in your disclosure. Is that  
11 correct?

12 THE COURT: It was Plaintiff's Exhibit 823, I believe,  
13 for identification only. And it's now in evidence and will be  
14 accepted into evidence as Defendant's Exhibit 151.

15 MR. ROBINSON: 188.

16 THE COURT: 188. I'm sorry.

17 MR. ROBINSON: Thank you. That's all on that.

18 BY MR. ROBINSON:

19 Q. Now, other than housekeeping, Dr. Haynie, Mr. Mortara  
20 showed you a few studies on cross-examination.

21 Is there anything that you went over with him that changes  
22 your overall conclusions in this case?

23 A. No.

24 Q. As an academic, as a researcher in this field, have you  
25 reviewed a large body of literature in your time looking at

1 these issues?

2 A. Yes.

3 Q. Have you sometimes seen studies that point in different  
4 directions on these issues?

5 A. Yes. Absolutely.

6 Q. What does the preponderance of the evidence show in terms  
7 of the value of diversity and inclusion to the military?

8 A. I think I would go back to the three buckets that I  
9 mentioned earlier. There is an inherent value in -- not just  
10 from a numbers but a quality of numbers standpoint for the  
11 United States, especially as it considers the adversaries and  
12 the challenges that we face.

13 There's an inherent value, as the broader diversity and  
14 inclusion literature shows, about the value of diverse teams  
15 and inclusive teams. I want to emphasize that inclusive part.

16 And then the third piece is the specific nature of the  
17 department's mission to provide the forces needed to deter war  
18 and ensure the nation's security.

19 As I've mentioned a number of times in my testimony, war  
20 itself requires that we understand that human element to  
21 understand war is a phenomenon. And so that, again,  
22 overarchingly the broad trend of the research shows us that  
23 human face of war and teaches us that we need to understand it.  
24 And one way to help us understand it effectively is through  
25 diversity and inclusion practices.

1           **MR. ROBINSON:** Thank you. Nothing further.

2           **THE COURT:** Thank you.

3           Any redirect, Mr. Mortara?

4           **MR. MORTARA:** No, Your Honor.

5           **THE COURT:** Dr. Haynie, in summary, you had four  
6 bases -- four opinions based upon essentially your testimony:  
7 Diversity and inclusion support military efficiency. And a  
8 great deal of time has been spent on that in terms of  
9 cross-examination of you.

10          But then we have Opinion 2 in terms of diversity and  
11 inclusion support recruitment and retention.

12          Opinion 3 is diversity and inclusion support the domestic  
13 and international legitimacy of our forces.

14          And the fourth opinion being the Department of Defense has  
15 consistently concluded that a diverse and inclusive military is  
16 both critical to mission success and a national security  
17 imperative.

18          All three of those opinions were in addition to Opinion 1,  
19 about which there's been a great deal of time spent. But  
20 there's three other bases and three other opinions here,  
21 correct?

22          **THE WITNESS:** Yes, sir.

23          **THE COURT:** All right. Thank you very much. You may  
24 step down. Thank you for your service.

25          What was your final rank in the military, by the way.

1           **THE WITNESS:** Lieutenant colonel, sir.

2           **THE COURT:** We'll go by doctor now because that's  
3 higher than colonel, but thank you for your service very much.

4           **THE WITNESS:** Thank you very much.

5           **THE COURT:** And thank you for your time.

6           With that, we have -- we can probably at least get  
7 started, I think. It would be wise in terms of time  
8 efficiency --

9           Again, thank you, Dr. Haynie. And, again, thank you for  
10 your service.

11           All right. So, with that, we have Dr. Jason Lyall. I  
12 think we can get started on Dr. Lyall today and then continue  
13 on to tomorrow.

14           Is that good for you, Mr. Robinson?

15           **MR. ROBINSON:** It is, Your Honor.

16           **THE COURT:** Mr. Mortara, is that good for you? We'll  
17 start getting started for a while?

18           **MR. MORTARA:** Absolutely, Your Honor. Mr. Strawbridge  
19 will be handling Professor Lyall for us.

20           **THE COURT:** All right. Mr. Strawbridge, I doubt if  
21 you're going to get to your cross-examination today.

22           **MR. STRAWBRIDGE:** That's just fine, Your Honor.

23           **THE COURT:** Dr. Lyall, welcome. And you'll be sworn,  
24 please.

25           **THE CLERK:** Please raise your right hand.



(Witness sworn.)

**THE CLERK:** Please state and spell your first and last name for the record.

**THE WITNESS:** My name is Jason Lyall, J-A-S-O-N, Lyall. That's L-Y-A-L-L.

**DIRECT EXAMINATION**

**BY MR. ROBINSON:**

**Q.** Good afternoon, Professor Lyall.

**A.** Good afternoon.

**Q.** Could you please state your current position and title.

**A.** Yes. I am the James Wright Chair of transnational studies and associate professor in the department of government at Dartmouth College, where I also direct the political violence field lab. It's a long title.

**Q.** Is that a tenured position?

**A.** It is a tenured position, yes.

**Q.** And you mentioned you were the James Wright Chair of transnational studies. Is that an endowed chair?

**A.** It is, yes.

**Q.** I'd like to talk a bit about your educational background and professional experience. Where did you attend undergraduate?

**A.** At Simon Fraser University in Vancouver, British Columbia, Canada.

**THE COURT:** What university?

1           **THE WITNESS:** It's Simon Fraser University. It's in  
2 Vancouver, Canada.

3 **BY MR. ROBINSON:**

4 **Q.** Did you earn a degree from Simon Fraser University?

5 **A.** I did, yes.

6 **Q.** In which fields?

7 **A.** Double major in history and political science.

8 **Q.** After undergrad, did you attend graduate school?

9 **A.** I did, yes. Cornell University.

10 **Q.** And what degree did you earn from Cornell?

11 **A.** A PhD in government.

12 **Q.** What was the topic of your dissertation at Cornell?

13 **A.** I wrote a dissertation on why states become aggressive in  
14 the international system.

15 **Q.** What did you do after obtaining your PhD from Cornell?

16 **A.** I received my first job at Princeton University.

17 **Q.** What did you do at Princeton?

18 **A.** I taught courses, and I conducted research on  
19 international security.

20 **Q.** And how long were you at Princeton?

21 **A.** About four years.

22 **Q.** You said you taught classes. What are some of the classes  
23 you taught at Princeton?

24 **A.** Yeah, so I taught some of the big lecture courses,  
25 introduction to international relations, introduction to

1 international security. I taught courses on civil wars and  
2 questions of military effectiveness.

3 Q. And you said you were at Princeton for four years. Why  
4 did you leave?

5 A. So I was recruited to Yale.

6 Q. Why did you want to go to Yale?

7 A. So at the time Yale had one of the best, if not the best,  
8 centers for the study of political violence. It was called  
9 order, conflict, and violence. And there was a collection of  
10 scholars there working on it. And that was an attractive  
11 intellectual proposition, and they also encouraged field work.  
12 And I spend a lot of my time in the field.

13 Q. How long did you spend at Yale?

14 A. Nine years.

15 Q. Were you on a tenure track at Yale?

16 A. I was, yes.

17 Q. What were some of the classes that you taught at Yale?

18 A. I taught similar courses, introduction to international  
19 relations again, introduction to international security,  
20 courses on civil war, courses on political violence.

21 Q. Did you do any field work while you were at Yale?

22 A. I did, yes. I began field work in Afghanistan in the  
23 summer of 2009; so just before I started at Yale.

24 Q. We'll turn to that in a second, but did you do any other  
25 type of research, not necessarily in Afghanistan, during this

1 time at Yale?

2 A. I did. So right when I got to Yale -- so this would be  
3 2009/2010 -- I created the political violence field lab. And  
4 that was designed to be an interdisciplinary center for  
5 undergraduate and graduate students working on political  
6 violence. And from some of the efforts there, we constructed  
7 Project Mars, which is part of the basis for my book.

8 Q. Why is it called Project Mars, Professor Lyall?

9 A. It's named after the Roman god of war.

10 Q. Okay. We'll be talking a lot about Project Mars today and  
11 tomorrow morning, I gather. But first, I just want to go  
12 through some more qualifications and experiences.

13 A. Sure.

14 Q. Did you receive tenure from Yale?

15 A. I did not, no.

16 Q. Do you know why?

17 A. No. I moved through assistant and then associate rank but  
18 was denied tenure. And I was not given a reason why.

19 Q. What happened after your time at Yale?

20 A. So about eight weeks later, I had a job offer from  
21 Dartmouth and the endowed chair.

22 Q. And you said that was a tenured professorship at  
23 Dartmouth?

24 A. Yes.

25 Q. What classes do you teach at Dartmouth?

1 A. Again, similar. Introduction to international relations.  
2 I teach classes on civil war. I teach classes on war and  
3 society as well as questions of military effectiveness and how  
4 to deliver humanitarian aid in violent settings.

5 Q. Do you also do research at Dartmouth?

6 A. I do, yes.

7 Q. Have you authored any publications on diversity and  
8 inclusion in battlefield performance?

9 A. Yes, indeed. It's one of the core components of my  
10 research agenda. So I have written a book on it called  
11 "Divided Armies" and a series of publications resulting from  
12 that as well.

13 Q. Is this the book that you authored, "Divided Armies"?

14 A. It is indeed, yes.

15 Q. All right. It is not an exhibit; so we won't be reading  
16 from it, but what is "Divided Armies" about?

17 A. Yeah, in a nutshell, it's a very large book, but it is  
18 about how racial and ethnic inequalities inside your military  
19 can lead to poor battlefield performance in modern war since  
20 about 1800.

21 Q. What are some of the academic journals in which your  
22 articles have been published?

23 A. So I have been lucky to place my articles in a series of  
24 top journals in political science. American Political Science  
25 Review, American Journal of Political Science -- which are two

1 different journals even though they sound the same --  
2 International Organization, a series of sort of field journals  
3 as well, like World Politics, Journal of Conflict Resolution,  
4 as well as journals outside political science as well.

5 Q. Have you placed articles in journals that deal with  
6 statistics?

7 A. Yes.

8 Q. Has your scholarship won any awards?

9 A. Yes. I've been fortunate to win several awards. So  
10 "Divided Armies" won four and was named best book of 2020 for  
11 foreign affairs. I don't know if that counts as an award.  
12 Several of my articles have also won awards.

13 Q. Have you yourself as an academic won other awards and  
14 honors?

15 A. I have. In 2020 I was named a Carnegie scholar, and I was  
16 just recently renewed for the endowed chair. And I've won a  
17 teaching award at Princeton and an advising and mentoring award  
18 at Dartmouth as well.

19 Q. You mentioned a Carnegie scholar. What is that?

20 A. So the Carnegie scholar award is annually given to about  
21 20 individuals across different social science and arts fields  
22 to work on a project. And they provide \$200,000 for research  
23 funding and basically no strings attached for you to work on  
24 whatever your project is that you applied for.

25 Q. Aside from that award, how else has your research been

1 funded?

2 A. So through a variety of different grants. I was one of  
3 the first Minerva holders from the Department of Defense, and  
4 so I held two Minerva grants from the Air Force Office of  
5 Scientific Research. I have won grants from the National  
6 Science Foundation, the Guggenheim Foundation, the MacArthur  
7 Foundation, and several others.

8 Q. Have you spoken publicly about the issue of diversity in  
9 battlefield performance?

10 A. I have, yes. I've given, I would say, about 40 talks --  
11 public talks at academic institutions, military organizations,  
12 intelligence organizations since the book came out.

13 Q. Professor Lyall, have you ever served in the military?

14 A. No, I have not served, although I have worked closely with  
15 the military in Afghanistan.

16 Q. Could you explain your work with the military in  
17 Afghanistan.

18 A. Yeah. So in 2009 there was something called the civilian  
19 surge, which was an effort to bring civilian experts into  
20 Afghanistan to help understand what was then an insurgency that  
21 was really gathering steam. I was part of something called the  
22 Counterinsurgency Academic Advisory Team, or the CAAT team.  
23 And that was in the summer of 2009.

24 And I worked with the military again in 2010 at the  
25 headquarters for the International Security Assistance Force.

1 And then I worked with the U.S. Agency for International  
2 Development from 2012 to 2015, where I liaised with the  
3 military to ensure that our survey teams could operate safely  
4 in about 82 different strategic districts of Afghanistan.

5 Q. Did your experiences working in Afghanistan with the  
6 military in 2009, 2010, and then again from 2012 to 2015 affect  
7 your decision to study the role of ethnic diversity in  
8 battlefield performance?

9 A. Yes. Absolutely.

10 Q. Could you explain how it did that.

11 A. Yeah, sort of a little bit of serendipity.

12 So in my first time in Afghanistan, again, the summer of  
13 2009, I was -- I'm sorry. Posted is maybe not the right word.  
14 I was living at Camp Julien, which was just south of Kabul in  
15 the ruins of an old palace. It was a NATO base where they were  
16 beginning to train an Afghan unit that was standing up.

17 I would spend my daytime in headquarters listening to  
18 consultants briefing about how well the Afghan army was being  
19 created. They were forging this new Afghan army, and that was  
20 going to be the exit solution for the United States.

21 And then I would go home that evening to Camp Julien, and  
22 I would go onto the base in which they were training the  
23 officers, and I would see a very, very different picture on the  
24 base. And there were essentially these two pictures of either  
25 creating this new Afghan army or, in the barracks, there were



1 all kinds of discipline problems and things of that nature.

2 And so it led me to begin to think about the question of  
3 diversity and its effects on battlefield performance.

4 Q. During your time in Afghanistan, were you ever in an  
5 active combat zone?

6 A. Yes.

7 Q. Were you ever in a position where you were taking fire?

8 A. Yes, on multiple occasions.

9 Q. Professor Lyall, has any government or agency ever asked  
10 you to present your findings about diversity and inclusion and  
11 the effect it can have on battlefield performance?

12 A. Yes. So various aspects of the U.S. military have -- U.S.  
13 government have. The UK Ministry of State and Ministry of  
14 Defense has also done that. And I have talks scheduled with  
15 the Japanese Ministry of Defense in the fall.

16 Q. When you spoke with the United States government on these  
17 issues, where was that?

18 A. It's been in several different locations, but one most  
19 recently was at the Pentagon itself in a high-level briefing.

20 Q. And has any government or agency actually asked you to  
21 work with them on this issue, work with their military?

22 A. Indeed, yes. So the Estonian government, through the NATO  
23 partnership, has asked to conduct an experiment with the next  
24 two years of their conscripts on the effects of prejudice and  
25 discrimination on unit cohesion and morale among their

1 conscript soldiers. So we have a close working relationship  
2 with the Estonian government to actually conduct an experiment  
3 and get evidence on how exposure to prejudice and  
4 discrimination is affecting unit cohesion.

5 I should mention why Estonia maybe is a good place to look  
6 for that. So it seems perhaps a little random. Estonia has a  
7 conscript Army, and 25 percent of Estonian conscripts are  
8 actually ethnically Russian, and they serve inside the Estonian  
9 defense forces. And they are being targeted heavily from  
10 Russian propaganda to become what the Estonian government fears  
11 would be the fifth columnists.

12 The Russian population within Estonia has faced official  
13 government discrimination in its language policies, its  
14 economic policies, and there's a concern that the absence of  
15 Russian officers -- they're not really able to be promoted  
16 inside the Estonian force -- is leading to discontent within  
17 the Estonian forces.

18 So the Estonian defense forces would like to know how deep  
19 that potential problem is and if there's anything you can do to  
20 foster a more inclusive environment to help increase unit  
21 cohesion.

22 **Q.** Thank you.

23 I'd now like to turn to your work on this case.

24 Did the Department of Justice retain you to provide expert  
25 opinions on certain issues in this case?

1 A. Yes.

2 Q. I want to be sure not to forget to ask this question.

3 Are you being paid as part of your work in this case?

4 A. Yes.

5 Q. What is your rate, Professor Lyall?

6 A. \$400 an hour.

7 Q. What issues were you asked to opine on?

8 A. I've been asked to opine on the relationship between  
9 diversity and inclusion and battlefield performance in modern  
10 war.

11 Q. How would you describe the methodology that you used to  
12 prepare your testimony today?

13 A. I would say it's three-pronged. The first is the use of  
14 Project Mars, which is a -- as I mentioned, this quantitative  
15 dataset looking at inequality and battlefield performance for  
16 the last 200 years.

17 There is a lit review -- a literature review of  
18 approximately 100 peer-reviewed articles tackling some  
19 connection between diversity, inclusion, and aspects of  
20 performance across multiple domains. And then there is  
21 reliance on the Pentagon's own survey data.

22 Q. Is the methodology that you just described widely used by  
23 other political scientists in your field?

24 A. Yes, both the qualitative and quantitative approaches.

25 Q. Did the application of this methodology allow you to reach

1 certain conclusions in this case?

2 A. It did, yes.

3 MR. ROBINSON: Your Honor, at this time I'd move to  
4 have Professor Lyall qualified as an expert on diversity and  
5 inclusion in battlefield performance.

6 THE COURT: Essentially an expert on the relationship  
7 of diversity and battlefield performance, correct?

8 MR. ROBINSON: Exactly.

9 THE COURT: Any voir dire, Mr. Strawbridge?

10 MR. STRAWBRIDGE: No, Your Honor.

11 THE COURT: All right. He'll be so accepted as an  
12 expert in that field.

13 BY MR. ROBINSON:

14 Q. Professor Lyall, did you prepare an expert report in this  
15 case?

16 A. Yes.

17 Q. Can we take a look at Defense Exhibit 195.

18 Is this your expert report?

19 A. Yes.

20 Q. Does this report contain the opinions that you intend to  
21 offer today?

22 A. Yes.

23 MR. ROBINSON: So, Your Honor, at this time I assume  
24 this report --

25 THE COURT: So admitted. So admitted.

1 BY MR. ROBINSON:

2 Q. Professor Lyall, have you prepared some demonstrative  
3 exhibits to assist the Court in following your testimony today?

4 A. Yes.

5 Q. Let's take a look at the first of those demonstrative  
6 exhibits. I believe it's marked Lyall 1.

7 Is this a summary of the opinions that you're offering  
8 today in this case?

9 A. Yes, it is.

10 Q. Could you describe for the Court your first opinion.

11 A. Yes. The first opinion is that racial and ethnic  
12 diversity is an advantage in modern combat.

13 Q. And your second opinion?

14 A. That racial inequality presents risks of adverse  
15 consequences.

16 Q. And your third opinion?

17 A. Military inequality has adverse effects beyond combat.

18 Q. And your fourth opinion?

19 A. Context analogous to modern combat demonstrate that  
20 diversity and inclusion can affect mission performance.

21 Q. Thank you.

22 You mentioned Project Mars earlier. Did you rely on your  
23 work with Project Mars to reach these conclusions?

24 A. Yes.

25 Q. Can we take a look at Lyall 2, and could you tell the

1 Court a little bit more about Project Mars, what it is, what it  
2 did.

3 A. Sure. I'd be happy to.

4 So coming back out of Afghanistan, I began to investigate  
5 the question of diversity and inclusion and battlefield  
6 performance and quickly realized that many of our existing  
7 datasets in political science didn't have any measures that  
8 were relevant, that it had not been a question that sort of  
9 mainstream political science in terms of international security  
10 had really looked at. So I decided to build my own  
11 essentially.

12 And I constructed the political violence field lab at  
13 Yale. I recruited, over the next seven years, 134  
14 undergraduates and graduates. We recruited for linguistic  
15 skills in particular so we could draw on multiple languages.  
16 And we built ourselves a new dataset of war essentially.

17 It covers 825 armies in 250 conventional wars that were  
18 fought between 1800 and 2011. And for each of these new  
19 armies, we constructed an index for how unequal or divided they  
20 are ethnically, racially. We built new measures for  
21 battlefield performance so we could capture different aspects  
22 of how armies fight on the battlefield. And then what we did  
23 is construct blue and red teams to collect and then audit the  
24 data.

25 So we would have an initial group of undergraduates or

1 graduate students working together to collect the data, and  
2 then we would have a random audit of that data by a red team  
3 that would go through and check for validity and check for  
4 errors in inputting and things like that.

5 And then what we would do is we -- for all of the  
6 variables, we would construct confidence measures for how sure  
7 we were about this kind of data working across this period of  
8 time.

9 So, with this, we have a new database to be investigating  
10 this question of diversity and inclusion.

11 Q. I think you mentioned in your testimony that one of the  
12 things you did was create an index for how unequal a particular  
13 army was. So how did Project Mars and its coders measure  
14 whether a particular historical army was unequal or not?

15 A. Yes. Absolutely.

16 So we constructed something called the military inequality  
17 coefficient, or MIC. And this is an index that has two kind of  
18 components to it. Imagine taking a snapshot essentially of an  
19 army just before it goes into battle.

20 We want to know two things. We want to know its ethnic  
21 and racial makeup. So what is the percentage that each group  
22 occupies inside the military on that eve of the war? And then  
23 we want to know, in this particular instance, whether these  
24 groups -- or how these groups are being treated by the state.

25 Are they seen as full citizens of the state, they enjoy

1 all political and economic rights? Are they marginalized? Are  
2 they targeted for discrimination, economic or political? Or in  
3 some cases, are these ethnic groups targeted for violence?

4 So it gives us an index, then -- those two things together  
5 give us an index running from 0 to 1 on how unequal or divided  
6 the army is.

7 As you move towards 1, you're basically getting more  
8 unequal; you're getting more inequality inside your army.

9 And the basic argument is, as you move towards 1, lots of  
10 bad things are going to start happening to your Army on the  
11 battlefield.

12 Q. I think you referenced this a bit in your answer, but I  
13 just want to be clear for the record. How did you and your  
14 coders define inequality for purposes of this analysis?

15 A. Yeah, so the connotative evidence in Chapter 4 of the  
16 book, which is the Project Mars component, looks at top-down  
17 discrimination or violence by the state itself as a measure of  
18 official government policy.

19 Q. So I'm going to ask you to walk the Court through how this  
20 actually works in an example. We have a demonstrative for  
21 this. I think it's Lyall 3. If we could turn to that.

22 So this is a hypothetical example?

23 A. Yes.

24 Q. But in this hypothetical example, with two -- an Army made  
25 up of two ethnic groups, how would you and your team go about



1 determining the military inequality coefficient?

2 A. Yeah, absolutely. And I realize this is 15 minutes before  
3 closing and we're doing math; so I'll try to make this as  
4 interesting as we possibly can.

5 THE COURT: No rush. We've got time. All day  
6 tomorrow. So just go ahead.

7 THE WITNESS: Okay. Well -- so in this hypothetical  
8 example, right, we're looking at an army that has two ethnic  
9 groups in it -- Ethnic Group A, Ethnic Group B.

10 Ethnic Group A is 80 percent of the army. So that's the  
11 .8 there. Ethnic Group B makes up the remainder. That's the  
12 .2, or 20 percent.

13 In this particular example, the 80 percent of the army,  
14 that Ethnic Group A, is experiencing discrimination at the  
15 hands of the state. It is being targeted. For whatever reason  
16 in this hypothetical example, they're seen as second-class  
17 citizens.

18 And so in this instance, we assign a value of .5. We  
19 basically have three options. A 0 is you have full equality.  
20 .5, you're being discriminated against. A 1, you're being  
21 violently subjected.

22 Here -- so we decided in this hypothetical that this group  
23 is being discriminated against; so it gets to .5.

24 The .2, this group, is favored by a leader or the leader's  
25 ethnic group or something along those lines. So it gets a 0.

1 There's no discrimination. There's no repression. It's just  
2 simple math after that. And this would result in a military  
3 inequality coefficient of .4.

4 **BY MR. ROBINSON:**

5 **Q.** So this is a hypothetical example, but if you were talking  
6 about a real example where you're looking at the different  
7 ethnic groups of a particular army, how did you and your team  
8 go about determining what the different ethnic groups were that  
9 made up a particular historical army?

10 **A.** Yeah, so this is a great question, and this is partly why  
11 the dataset, which I originally imagined would take one year,  
12 actually took far longer to generate.

13 Because what we had to do for every army, in order to take  
14 that snapshot, is to go back into the historical record and  
15 identify what the military calls tables of organization, which  
16 are the composition of the soldiers going into battle.

17 So they would say the rough percentages of which army --  
18 or which ethnic group was in the army at the time. We would  
19 also use historical or archival materials, sometimes eyewitness  
20 testimony, to begin to construct the ethnic proportion for each  
21 of these armies across time.

22 Most of the times, we are using these historical  
23 documents, and they're telling us what the ethnic groups are.  
24 We also use something -- an existing dataset that has a list of  
25 ethnic groups by state. And we would use that as a kind of

1 checklist to make sure we were looking and saying are we seeing  
2 all these actors, all of these ethnic groups, or are we missing  
3 some?

4 It was a limited utility. Most of it was coded for the  
5 post-1945 era. But it was helpful as a sort of a template.  
6 And so we would go through basically the historical materials  
7 army by army to build up this ethnic component.

8 **Q.** So after you determined the ethnic makeup of a particular  
9 army and calculated that army's military inequality  
10 coefficient, what was the next step in your analysis in Project  
11 Mars?

12 **A.** Yes. So once we finally had the MIC generated, we would  
13 turn to statistical analysis to compare or to begin to do a  
14 statistical analysis of the relationship between the MIC and  
15 various battlefield behaviors so we could see if there's a  
16 relationship between inequality and battlefield performance.

17 **MR. ROBINSON:** So, Your Honor, at this point I was  
18 going to turn to Professor Lyall's conclusions. It might make  
19 sense to stop here logically.

20 **THE COURT:** I think that's probably a good place to  
21 stop, Mr. Robinson. You're correct. I just need to go over  
22 some scheduling with counsel.

23 Dr. Lyall, you're excused. You shouldn't discuss your  
24 testimony with anyone in the event that you're called back to  
25 the witness -- I mean, you're going to be back to the witness

1 stand tomorrow. But while you're on the witness stand, you  
2 really shouldn't be talking about your testimony with anyone.

3 **THE WITNESS:** Thank you. I understand.

4 **THE COURT:** So thank you very much. We're going to  
5 adjourn for the day. I've just got to go over some scheduling  
6 with counsel. You can go back to the back of the courtroom.  
7 You don't need to leave.

8 Okay. As I understand it, Counsel, we've got Professor  
9 Lyall, and then we have Admiral Fuller and then Dr. Gurree, and  
10 then Captain Sundberg and Stephanie Miller. They're the  
11 remaining witnesses that have been listed thus far, and then  
12 there's some remaining may-call witnesses, Mr. Blum,  
13 Katherine -- or Dr. Batterton, and Anna Wood that are listed as  
14 perhaps may be called.

15 Are they going to be called, do you think, Mr. Mortara?

16 **MR. MORTARA:** Your Honor, from our perspective, they  
17 will not. And also I can advise the Court at this point,  
18 there's no way we're putting on a rebuttal case.

19 **THE COURT:** Okay. That's fine.

20 And Mr. Gardner?

21 **MR. GARDNER:** That accords, Your Honor.

22 **THE COURT:** Okay. So we're basically looking at  
23 Dr. Lyall, Admiral Fuller, Dr. Gurree, Captain Sundberg, and  
24 Stefanie Miller. And that'll be the end of presentation of  
25 witnesses, correct?

1           **MR. GARDNER:** That's right, Your Honor.

2           **THE COURT:** Okay. Well, that's fine. We're right on  
3 schedule. And it certainly appears we may finish with  
4 testimony Wednesday. My thinking is that there's no rush. I  
5 mean, I hope you all realize I'm giving you all the time you  
6 want.

7           But I would think that maybe we think, as opposed to  
8 rushing to get to closing arguments on Wednesday, it may be  
9 that we give you time to go through the exhibits, summarize  
10 your closing argument and we -- if we continue at this pace,  
11 we're going to finish testimony sometime Wednesday and have  
12 closing arguments Thursday, it would seem to me to make sense  
13 to give everyone time.

14           Is that good for you, Mr. Mortara?

15           **MR. MORTARA:** It's Mr. Strawbridge doing it, but I'm  
16 authorized to say absolutely. And we haven't talk about this,  
17 but one hour each for closing.

18           **THE COURT:** I'm not going to limit you is the point.  
19 I mean, I just -- whatever you want to do.

20           Mr. Gardner, does that sound workable to you?

21           **MR. GARDNER:** Yes, Your Honor. We were expecting  
22 Thursday for closings.

23           **THE COURT:** That's fine. That's fine. The goal is  
24 we'll finish up testimony, presentation of evidence.

25           By the way, each time that we have demonstrative exhibits,

1 as I've said before, I choose that they come into evidence as  
2 well. They're very helpful on both sides in terms of  
3 summarizing things.

4 So it's not a Herculean task, but it's not quite as easy  
5 as many times to go through all the exhibits, which is another  
6 reason we're allowing time on Wednesday to make sure we're all  
7 clear on what the exhibits are, that you work with Ms. Herndon  
8 and my law clerks. And then we'll shoot for closing arguments  
9 at 10:00 o'clock on Thursday. So okay. I'm just going over  
10 the scheduling with that.

11 And with that -- yes, Mr. Gardner?

12 **MR. GARDNER:** Your Honor, we have one housekeeping  
13 matter that Mr. Strawbridge and I discussed.

14 **THE COURT:** Sure.

15 **MR. GARDNER:** And it's really what Your Honor's  
16 preference is.

17 So as you recall, Ms. Truesdale, we were going to  
18 designate her --

19 **THE COURT:** Yes. Yeah.

20 **MR. GARDNER:** -- deposition testimony. We also have  
21 the 30(b)(6) testimony that the plaintiff has designated. We  
22 did some limited counterdesignations.

23 **THE COURT:** And who is the witness? I'm sorry.

24 **MR. GARDNER:** Well, it was actually three 30(b)(6)  
25 designees that are designated. The real -- the practical

1 question we have is how would you like us to submit that to  
2 you? Would you like us to file it on the public record?

3 **THE COURT:** Let me ask you. How long will it take to  
4 read those depositions into the record?

5 **MR. GARDNER:** I don't think you would -- we'll do  
6 whatever you want. I do think it would be a little lengthy.

7 **THE COURT:** Well, I'm trying to -- how lengthy, is the  
8 point?

9 **MR. GARDNER:** I've not seen the Truesdale  
10 counterdesignations, but it's about -- I don't know. It's  
11 slightly under 300 pages, and we've designated quite a bit of  
12 it. So I would guess it would be a few hours probably.

13 **THE COURT:** All right. Mr. Mortara, what's your  
14 preference on this?

15 **MR. MORTARA:** My preference would be to submit it in  
16 writing, Your Honor, because it really is the entirety of  
17 Admiral Truesdale's --

18 Admiral Truesdale's?

19 Ms. Truesdale's -- Ms. Truesdale?

20 **MR. GARDNER:** Ms. Truesdale.

21 **MR. MORTARA:** -- Ms. Truesdale's deposition; so it  
22 would take quite some time. And I think Ms. Thomas might  
23 not --

24 **THE COURT:** I guess what I'm thinking of is in terms  
25 of whatever is in the record is made for public dissemination.

1 I'm just thinking in terms of any public interest to be able to  
2 hear what that testimony is is the point. And actually  
3 requiring someone to read it, I don't know.

4 **MR. GARDNER:** I mean, we'd be happy to file it on the  
5 public record. There's nothing in Ms. Truesdale's deposition  
6 that is confidential or private.

7 **THE COURT:** Is Ms. Truesdale the one witness that will  
8 be very lengthy in terms of reading her deposition?

9 **MR. GARDNER:** I think hers would -- I mean, I haven't  
10 seen the counterdesignations, but our designations are rather  
11 extensive.

12 **THE COURT:** Mr. Mortara, both of you seem to be of  
13 agreement. We'll just submit those on the record without  
14 having them read into it, and I'll be able to consider those,  
15 correct?

16 **MR. MORTARA:** That's our preference as well.

17 **THE COURT:** All right. Okay. I think it's a matter  
18 of public dissemination. Maybe we can have those be marked as  
19 exhibits and make them be publicly available in terms of -- for  
20 public dissemination. That's the point.

21 **MR. GARDNER:** That's fine.

22 And for your ease, Your Honor, would you prefer -- one  
23 thing we had discussed is that the government would highlight  
24 its designations in one color; the plaintiffs would do it --

25 **THE COURT:** That would be very helpful.



1           **MR. GARDNER:** -- theirs in a separate color, and we'll  
2 just submit the deposition as an exhibit, and we'll just come  
3 up with a --

4           **THE COURT:** Yeah, I mean, you're going to submit the  
5 entire deposition, then, and you're going to have the  
6 designated portions that you'll each just highlight. So you  
7 don't have to be taking time to --

8           **MR. GARDNER:** Exactly.

9           **THE COURT:** -- take time to try to lift these out and  
10 engage in a real work exercise. That seems to me to be the  
11 most efficient way to do it.

12           **MR. GARDNER:** Exactly. Would you prefer that we do  
13 the 30(b)(6) the same way?

14           **THE COURT:** Yeah, I think that makes sense. In terms  
15 of editing -- I mean, let's face it, we've had expert reports  
16 here where it's been clear in terms of Rule 805 and it may be  
17 hearsay within hearsay that I'm able to ferret that out. And  
18 it seems to work very smoothly.

19           So those exhibits are in evidence in their totality. So  
20 it seems to me that the depositions can be in evidence in their  
21 totality, and you just highlight the portions that each of you  
22 want to be submitted in your case. And that sounds fine.

23           **MR. GARDNER:** Perfect. Thank you, Your Honor. That's  
24 what we'll do.

25           **THE COURT:** Okay. All right. Unless there's anything

1 from --

2 Mr. Mortara, anything further from your point of view?

3 **MR. MORTARA:** Nothing from us, Your Honor.

4 **THE COURT:** Mr. Gardner, anything further from your  
5 point of view?

6 **MR. GARDNER:** Nothing from us, Your Honor.

7 **THE COURT:** All right. We'll go. Thank you all very  
8 much.

9 And, with that, I will see you at 10:00 tomorrow morning.

10 This Court stands adjourned for the day.

11 **THE CLERK:** All rise. This Honorable Court is now  
12 adjourned.

13 (Court adjourned at 5:02 p.m.)  
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CERTIFICATE OF OFFICIAL REPORTER

I, Ronda J. Thomas, Registered Merit Reporter, Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 23rd day of September 2024.

*Ronda J. Thomas*

Ronda J. Thomas, RMR, CRR  
Federal Official Reporter

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